

1 Chandra Ferrari, CA Bar No. 246012
Staff Counsel
2 Department of Fish and Game
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5

6 STATE OF CALIFORNIA
7 STATE WATER RESOURCES CONTROL BOARD
8

9 In the Matter of:)
10 Hearing Regarding Water Right Application) NOTICE OF MOTION TO QUASH
11 30166 of El Sur Ranch) NOTICES OF DEPOSITIONS OF KIT
CUSTIS, DEBORAH HILLYARD AND ROB
12) TITUS AND FOR PROTECTIVE ORDER
13) TO LIMIT DISCOVERY
14) [Filed Concurrently With: (1) Memorandum of
Points and Authorities, (2) Declaration of
15) Chandra Ferrari and (3) Proposed Order]

16 Hearing Date: TBA
Time: TBA
Place: Sacramento

17
18 NOTICE IS HEARBY GIVEN that at a time to be determined, at the office of the State
19 Water Resources Control Board (SWRCB), a hearing will be held to determine if the SWRCB
20 will grant this motion by the Department of Fish & Game (Department) to quash the notices
21 received by the Department on May 11, 2011, that require the depositions of Kit Custis, Rob
22 Titus and Deborah Hillyard. In addition, the SWRCB will consider this motion for a protective
23 order that the depositions of Kit Custis, Rob Titus and Deborah Hillyard, which are to commence
24 as early as May 25, 2011, not be taken and that the demanded documents not be produced.
25 Alternatively, the SWRCB will consider an alternative motion for a protective order limiting the

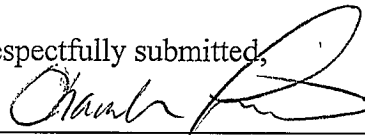
1 depositions to a specified length of time, and limiting the circumstances under which documents
2 must be produced.

3 This motion to quash is made on the ground that the notices of deposition were not served
4 on all parties who have appeared in this action, and that the discovery proceedings will not be
5 completed within 30 days of the hearing as required by the California Code of Civil Procedure
6 section 2024.020(a). The motion for protective order is made on the grounds that good cause
7 exists for this order because the discovery sought is unreasonably cumulative and duplicative, is
8 obtainable from another source that is more convenient, and is overly burdensome to the
9 Department, and that a protective order is necessary to protect the Department from unwarranted
10 annoyance, embarrassment, or oppression and undue burden and expense.

11 This motion is based on this notice of motion, on the memorandum of points and
12 authorities accompanying this motion, the declaration of Chandra Ferrari and on any evidence
13 that may be presented at the hearing on this motion. If the SWRCB determines that a hearing on
14 this motion is unnecessary or a decision on this motion is made prior to the hearing date on this
15 motion, the Department will waive its right to a hearing on this motion.

16 Dated: May 13, 2011

17 Respectfully submitted,

18 

19 Chandra Ferrari, Attorney for Department
20 of Fish and Game

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6 STATE OF CALIFORNIA
7 STATE WATER RESOURCES CONTROL BOARD
8

9 In the Matter of:)
10 Hearing Regarding Water Right Application) MEMORANDUM OF POINTS AND
11 30166 of El Sur Ranch) AUTHORITIES IN SUPPORT OF MOTION
12) TO QUASH NOTICES OF DEPOSITIONS
13) OF KIT CUSTIS, DEBORAH HILLYARD,
14) AND ROB TITUS AND FOR PROTECTIVE
15) ORDER TO LIMIT DISCOVERY
16) [Filed Concurrently With: (1) Notice of
17) Motion, (2) Declaration of Chandra Ferrari and
18) (3) Proposed Order]

Hearing Date: TBA
Time: TBA
Place: Sacramento

19 **I.**
20 **INTRODUCTION**

21 Pursuant to Water Code section 1100 and Code of Civil Procedure sections 2024.020
22 subdivision (a), 2025.240 subdivision (a), 2025.420 subdivision (b) and 2019.030 subdivisions
23 (a) and (b), the Department of Fish and Game (Department) files its Motion to Quash Notices of
24 Deposition for Kit Custis, Rob Titus and Deborah Hillyard and for a Protective Order Restricting
25 Discovery. The motion is made in response to the Notice of Deposition of Kit Custis and
Demand for Production of Documents, Notice of Deposition of Rob Titus and Demand for

1 Production of Documents and Notice of Deposition of Deborah Hillyard and Demand for
2 Production of Documents (Attachment A) served on the Department by James J. Hill III
3 (Applicant). By its motion, the Department requests that the State Water Resources Control
4 Board (SWRCB) issue an order quashing the Notices of Deposition for Kit Custis, Rob Titus and
5 Deborah Hillyard. If the SWRCB declines to quash the notices, or orders the notices quashed
6 but allows for re-noticing, DFG requests that the SWRCB issue a protective order directing that
7 the three depositions not be taken at all and that the demanded documents and writings not be
8 produced, inspected or copied. Alternatively, DFG requests that the SWRCB order the
9 depositions to be limited to two hours per person and direct that documents need only be
10 produced if they are not already in the possession of the Applicant or his representatives or
11 cannot be readily obtained by another source.

12 II.

13 LEGAL FRAMEWORK AND ARGUMENTS FOR MOTION TO QUASH

14 The Applicant relies on Water Code section 1100 as authority for its discovery requests.
15 Water Code section 1100 authorizes parties to adjudicative proceedings before the SWRCB to
16 take the depositions of witnesses in compliance with the Civil Discovery Act (Code Civ. Proc.
17 §§ 2016.010-2036.050). The Civil Discovery Act specifies notice and timing requirements that
18 must be met to properly conduct discovery proceedings.

19 A. THE MOTION TO QUASH IS JUSTIFIED BECAUSE PROPER SERVICE 20 WAS NOT EFFECTUATED

21 The Motion to Quash should be granted because the Applicant failed to comply with the
22 notice provisions of the Civil Discovery Act. As noted above, parties utilizing Water Code
23 section 1100 to take depositions of witnesses in SWRCB proceedings must comply with the
24 provisions of the Civil Discovery Act. (Water Code § 1100.) The Civil Discovery Act mandates
25 that any party who prepares a notice of deposition shall give the notice to every other party that
has appeared in the action. (Code Civ. Proc. § 2025.240(a).) Furthermore, the deposition notice,

1 or accompanying proof of service, must list all of the parties on whom it has been served. (Id.)
2 The Applicant failed to comply with this requirement.

3 On May 11, 2011, the Applicant sent an email to the Department that contained as
4 attachments three Notices of Depositions for Kit Custis, Deborah Hillyard and Rob Titus,
5 respectively. The email was also addressed to Walter Motzel, Lori Lockwood, and
6 representatives of Trout Unlimited and the Center for Biological Diversity (Attachment B). The
7 Proofs of Service for all three Notices of Deposition also indicated that notice was served to only
8 those individuals who also received the email (Attachment A). The revised service list for this
9 proceeding was made available to hearing participants on March 1, 2011. The service list
10 includes California Sportfishing Protection Alliance (CSPA) and Carmel River Steelhead
11 Association (CRSA) among the parties required to be served with all documents related to this
12 hearing. The conspicuous lack of mention of CSPA and CRSA in the Proofs of Service
13 submitted with the Notices of Deposition indicate that the Applicant clearly failed to serve them
14 with the documents. The Applicant has failed to comply with the requirements of the Civil
15 Discovery Act and therefore the motion to quash all three Notices of Deposition should be
16 granted.

17 **B. THE MOTION TO QUASH IS JUSTIFIED BECAUSE THE APPLICANT**
18 **CANNOT COMPLY WITH THE TIME LIMITATIONS CONTAINED IN**
19 **THE CIVIL DISCOVERY ACT**

20 The Motion to Quash should also be granted because the Applicant cannot comply with
21 the timing provisions of the Civil Discovery Act. As noted above, parties utilizing Water Code
22 section 1100 to take depositions of witnesses in SWRCB proceedings must comply with the
23 provisions of the Civil Discovery Act. (Water Code § 1100.) The Civil Discovery Act mandates
24 that discovery proceedings be completed 30 days before the initial hearing date. (Cal. Civ. Proc.
25 § 2024.020 subd. (a).) The hearing date for this matter is scheduled for June 16, 2011.
Discovery proceedings are required to be completed by May 17, 2011. Given that at least 10

1 days notice is required before a deposition can occur (Cal. Civ. Proc. § 2025.270(a)), the
2 Applicant cannot comply with the timing requirement. An exception to the timing requirement
3 does exist for witnesses designated as experts under Chapter 18 of the Civil Discovery Act (Code
4 Civ. Proc. § 2024.030.). In this case, the Department plans to present Kit Custis and Rob Titus at
5 the hearing on water right application 30166 to provide expert testimony on hydrology and
6 fisheries related issues. Therefore, it is possible that section 2024.020(a)'s 30-day notice
7 requirement does not apply to their Notice of Depositions. However, Deborah Hillyard has not
8 been designated as an expert, and therefore the 30-day notice requirement discussed above
9 certainly applies to her Notice of Deposition. The Motion to Quash should be granted, at least in
10 respect to the Notice of Deposition sent to Deborah Hillyard, because the Applicant cannot
11 comply with the timing requirements of the Civil Discovery Act.

12 III.

13 **LEGAL FRAMEWORK AND ARGUMENTS FOR THE MOTION FOR A** 14 **PROTECTIVE ORDER**

15 As stated above, should the SWRCB deny the Department's motion to quash or authorize
16 the Applicant to re-serve the Notice of Depositions, the Department requests that the SWRCB
17 issue a protective order limiting discovery in this proceeding. The Applicant relies on Water
18 Code section 1100 as authority for its discovery requests. Water Code section 1100 authorizes
19 parties to adjudicative proceedings before the SWRCB to take the depositions of witnesses in
20 compliance with the Civil Discovery Act (Code Civ. Proc. §§ 2016.010-2036.050). The Civil
21 Discovery Act identifies several bases for limiting discovery. Pursuant to the Civil Discovery
22 Act, a protective order may be issued if the discovery sought would be "unreasonably cumulative
23 or duplicative, or is obtainable from some other source that is more convenient, less burdensome,
24 or less expensive." (Id., § 2019.030(a), subs. (1) and (2).) A protective order may also be
25 granted to protect a party from undue burden and expense. (Id., § 2025.420, subd.(b).) A

1 protective order may be issued on either of these grounds to direct that a deposition not be taken
2 at all, or that it be limited in scope or duration. (Id., §§ 2025.420(b), subs. (1) and (11).)

3 **A. THE MOTION FOR A PROTECTIVE ORDER LIMITING DISCOVERY**
4 **SHOULD BE GRANTED BECAUSE THE REQUEST IS UNREASONABLY**
5 **CUMULATIVE AND DUPLICATIVE AND CAN BE OBTAINED FROM**
6 **ANOTHER SOURCE**

7 The motion for a protective order should be granted because the discovery sought is
8 duplicative, unreasonably cumulative and can be (or already has been) obtained from another
9 source. Most, if not all, of the information requested by the Applicant in the Notice of
10 Depositions has been provided to the Applicant already or will be provided to him as a result of
11 the SWRCB's hearing procedures.

12 The purpose of discovery, as it relates to expert witnesses, is "to give fair notice of what
13 an expert will say at trial." (*Bonds v. Roy* (1999) 20 Cal.4th 140, 146.) However, the
14 Department's position on the four issues that are the subject of a hearing by the SWRCB as
15 indicated in its Notice of Public Hearing on Water Right Application 30166 of El Sur Ranch,
16 dated December 20, 2010, can hardly be a surprise to the Applicant given the Department's
17 extensive involvement in this matter since the time the original water right application was
18 submitted in 1992. After the Department's testimony on three of the four issues and supporting
19 exhibits are filed on May 19, 2011, there will be few, if any, Department documents left that the
20 Applicant has not already received through the California Environmental Quality Act (CEQA)
21 process, the Public Records Act process, the water right settlement process or the water right
22 hearing process. More importantly, the Applicant will have in its possession the testimony of the
23 Department's two experts more than four weeks prior to the hearing on water right application
24 30166. Given that the Applicant currently possesses relevant Department documents, or will
25 soon possess them after the exchange of testimony and exhibits on May 19, 2011, the Applicant
will have more than fair notice of what the Department's experts will say during the hearing.

1 Therefore, the discovery sought is duplicative, unreasonably cumulative and will (or already has
2 been) obtained from another source.

3 As stated above, the Applicant has had numerous opportunities over the last 19 years to
4 gather information from the Department. A quick search of the SWRCB's website will find the
5 latest comment letter from the Department on the Draft Environmental Impact Report with
6 fourteen attachments, which constitute previous correspondence from the Department including
7 multiple memoranda from Kit Custis analyzing the deficiencies of Applicant supplied
8 information. Further, the Applicant has submitted four Public Records Act requests to the
9 Department related to this matter beginning January 13, 2010. The last request was received on
10 May 5, 2011. The Department has expended much staff time and effort complying with those
11 requests. Additionally, the Department and the Applicant have been in settlement negotiations
12 since early 2010. These negotiations have resulted in no less than four in-person meetings. Kit
13 Custis, Rob Titus and Deborah Hillyard were present at those meetings and available for
14 questions from the Applicant. Finally, the Applicant will obtain any remaining information it
15 seeks by virtue of the SWRCB's adjudicative hearing process. As stated above, this process
16 ensures that the Applicant will obtain the direct testimony from the Department's witnesses and
17 documents supporting their testimony prior to the hearing. In addition, the Applicant will have
18 the opportunity to cross-examine these witnesses at the hearing and submit additional evidence
19 to rebut evidence presented in the Department's case in chief. There is no admissible evidence
20 identified in the discovery requests that will not be made available by the SWRCB hearing
21 process. The process that the SWRCB has established for the exchange of information among
22 the parties is the less burdensome alternative for the Department to provide the requested
23 information to the Applicant as opposed to the discovery process.

24 In summary, the Applicant's request for depositions and document production demands
25 are unreasonable and duplicative, as they seek information and/or documents already in the

1 possession of the Applicant by virtue of the CEQA process and the Public Records Act, or soon
2 to be in the possession of the Applicant by virtue of the SWRCB process.

3 **B. THE MOTION FOR A PROTECTIVE ORDER LIMITING DISCOVERY**
4 **SHOULD BE GRANTED BECAUSE THE REQUEST WOULD SUBJECT THE**
5 **DEPARTMENT TO UNDUE BURDEN AND EXPENSE**

6 The Department is a state agency constrained by limited financial and personnel
7 resources. The Department continues to expend resources to engage in good faith settlement
8 negotiations with the Applicant. In addition, the Department has to expend substantial resources
9 to respond every time the Applicant submits a new request under the Public Records Act. This
10 discovery request imposes an additional burden on the Department and its experts during an
11 extremely critical time for hearing preparation. As currently scheduled, the first deposition will
12 occur May 25, less than one week after testimony and exhibits are due to be submitted. The
13 second and third depositions will occur June 2 and 3 respectively, less than two weeks before the
14 hearing. To respond and prepare for these discovery requests, the Department and its experts
15 will be required to devote significant amounts of time and resources to the effort and attention
16 will be diverted from hearing preparation. The Department believes that it will be able to present
17 better quality information to the SWRCB if it is protected from unnecessary discovery requests.
18 A protective order is warranted to protect the department from the undue burden and expense
19 associated with the Applicant's discovery requests.

20 **IV.**

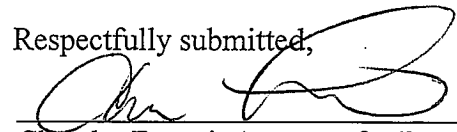
21 **CONCLUSIONS**

22 For the foregoing reasons, the Department requests that the SWRCB grant the Department's
23 motion and issue an order quashing the Notices of Deposition for Kit Custis, Rob Titus and
24 Deborah Hillyard. The Department also requests that the SWRCB grant the Department's
25 motion and issue a protective order directing that no depositions be taken and that the demanded

1 documents and writings not be produced, inspected, or copied. In the alternative, if the SWRCB
2 determines that the depositions should go forward, the Department requests that the burden on
3 the Department be minimized by a protective order limiting the depositions to two hours per
4 person and that document production be limited to exclude documents already in the possession
5 of the Applicant or easily obtainable from sources other than the Department.

6
7 Dated: May 13, 2011

8 Respectfully submitted,



9
10 Chandra Ferrari, Attorney for Department
of Fish and Game

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2 Department of Fish and Game
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6 STATE OF CALIFORNIA
7 STATE WATER RESOURCES CONTROL BOARD
8

9 In the Matter of:)
10 Hearing Regarding Water Right Application) DECLARATION IN SUPPORT OF MOTION
11 30166 of El Sur Ranch) TO QUASH NOTICES OF DEPOSITION OF
KIT CUSTIS, DEBORAH HILLYARD AND
12) ROB TITUS AND FOR A PROTECTIVE
ORDER TO LIMIT DISCOVERY
13) [Filed Concurrently With: (1) Notice of
Motion, (2) Memorandum of Points and
14) Authorities, and (3) Proposed Order]

15 Hearing Date: TBA
16 Time: TBA
Place: Sacramento
17

18
19 I, CHANDRA FERRARI, hereby declare to the following:

20 1. I am an attorney at law admitted to practice law in the State of California. I am
21 employed as a Staff Counsel with the Department of Fish and Game (Department), and I am the
22 attorney of record herein for the Department in the above described action.

23 2. A true and correct copy of each deposition notice for Kit Custis, Deborah
24 Hillyard and Rob Titus is attached as Attachment A.
25

1 3. I am familiar with the Public Records Act (PRA) requests submitted by Mr. James
2 J. Hill III (Applicant) since January 2010. There have been four requests in total. For each
3 request, the Department has provided the Applicant with responsive documents not qualifying as
4 attorney-client privileged communications. Complying with each request has required
5 considerable staff time and resources. The first request, dated January 14, 2010, contained over
6 fourteen categories of requested information. I am aware that the Applicant's document
7 demands include documents that are already in the possession of the Applicant by virtue of the
8 PRA responses. Attached hereto as Attachment C are true and correct copies of the Applicant's
9 PRA requests.

10 4. The Department has been engaged in settlement discussions with the Applicant
11 for approximately one year, beginning in May 2010. I have been in attendance at all of the
12 settlement meetings. In order to facilitate the discussions, the representatives of the Applicant
13 and Department staff met approximately five times. At most of those meetings, Kit Custis, Rob
14 Titus and Deborah Hillyard were present and subject to questions from the Applicant's
15 representatives and consultants. In addition, several phone conversations have occurred to
16 discuss various settlement proposals.

17 5. The Department is a state agency constrained by limited financial and personnel
18 resources. To respond to the discovery requests, Department staff will be required to devote a
19 significant amount of time to reviewing documents, preparing for depositions, traveling to
20 depositions and participating in depositions. This will detract from the resources needed by the
21 Department to prepare for the hearing.

22 6. One of the Department's key witnesses, Kit Custis, is a retired annuitant and is
23 limited in the number of hours he can work in a calendar year. The time he may require to
24 prepare for the deposition may push him past his allotted number of hours. In that case, he will
25 not be able to fully participate in hearing preparation.

1 7. After receiving Notice of the Depositions of Kit Custis, Deborah Hillyard and
2 Rob Titus, I was in communication with several of the Applicant's legal counsel. I indicated that
3 the Department may be filing motions related to the Notices. I also indicated that I did not
4 believe that the depositions could produce any information that they did not already have or
5 would not be able to obtain from the testimony and exhibits being submitted by the Department.
6 I encouraged them to contact me if they could identify specific documents (or descriptions of
7 documents) that they believed to be in the possession of the Department but not produced to
8 them already. They did not appear to have an interest in withdrawing their deposition notices.

9 I declare under penalty of perjury, under the laws of the State of California, that
10 the above is true and correct.

11 Date: May 13, 2011

12 Place: Sacramento, California



CHANDRA FERRARI

1 Chandra Ferrari, CA Bar No. 246012
Staff Counsel
2 Department of Fish and Game
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3 Sacramento, California 95814
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6 STATE OF CALIFORNIA
7 STATE WATER RESOURCES CONTROL BOARD
8

9 In the Matter of:)
10 Hearing Regarding Water Right Application) [PROPOSED] ORDER GRANTING
11 30166 of El Sur Ranch) MOTION TO QUASH NOTICES OF
DEPOSITIONS OF KIT CUSTIS, DEBORAH
12) HILLYARD, AND ROB TITUS AND
GRANTING PROTECTIVE ORDER TO
13) LIMIT DISCOVERY
14) [Filed Concurrently With: (1) Notice of
Motion, (2) Memorandum of Points and
15) Authorities, and (3) Declaration of Chandra
Ferrari]

16 Hearing Date: TBA
17 Time: TBA
18 Place: Sacramento

19
20 After review of the moving and opposing papers, and after hearing the argument of
21 counsel, the State Water Resources Control Board (SWRCB) grants the Department of Fish &
22 Game's (Department) Motion to Quash Notices of Depositions of Kit Custis, Deborah Hillyard
23 and Rob Titus. The SWRCB further grants the Department's Motion for a Protective Order.

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25 IT IS ORDERED that the depositions of Kit Custis, Deborah Hillyard and Rob Titus are not to
be taken, and the demanded documents are not to be produced, inspected or copied.

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Dated:

Charles Hoppin
Hearing Officer

Tam Doduc
Hearing Officer

Attachment A

1 JANET K. GOLDSMITH, State Bar No. 065959
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2 DANIELLE R. TEETERS, State Bar No. 210056
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6

7 Attorneys for Applicant James J. Hill III
8

9 BEFORE THE
10 STATE WATER RESOURCES CONTROL BOARD
11

12 **In the Matter of Water Right**
13 **Application No. 30166 of James J.**
14 **Hill, III**

15 **NOTICE OF DEPOSITION OF DEBRA**
16 **HILLYARD AND REQUEST FOR**
17 **PRODUCTION OF DOCUMENTS**

18 TO PROTESTANT DEPARTMENT OF FISH AND GAME AND ITS ATTORNEY (S) OF
19 RECORD:

20 PLEASE TAKE NOTICE that pursuant to Water Code section 1100, Government
21 Code sections 11450.10 and 11450.20, California Code of Civil Procedure section 2025.010 et
22 seq., and the procedures and practices of the State Water Resources Control Board, the deposition
23 of **DEBRA HILLYARD** will be taken by the Applicant James J. Hill III ("Applicant") in the
24 above entitled matter, upon oral examination before a certified shorthand reporter of the State of
25 California as follows:

26 DATE: June 1, 2011
27 TIME: 10:00 a.m.
28 LOCATION: Kronick Moskovitz Tiedemann & Girard
400 Capitol Mall, 27th Floor
Sacramento, CA 95814
916/321-4500

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NOTICE OF DEPOSITION OF DEBRA HILLYARD AND REQUEST FOR PRODUCTION OF DOCUMENTS

1 Said deposition will commence at the above date and time, and continue from day to day
2 thereafter, Sundays and holidays excepted, until completed. The Applicant reserves the right to
3 record this deposition by videotape.

4 **DOCUMENT REQUEST**

5 NOTICE IS FURTHER GIVEN that the above-described deponent shall bring and
6 produce at the deposition, at the time and place set out above, the following listed writings and
7 other things identified below.

8 **DEFINITIONS**

9 As used herein, the following terms have the meaning and significance set forth
10 below, unless otherwise specifically indicated:

11 1. **DOCUMENT.** The terms "**DOCUMENT**" or "**DOCUMENTS**" shall
12 mean and include all written, recorded, or graphic materials, however produced or reproduced,
13 whether or not privileged, pertaining in any way to the subject matter of this action, including, but
14 not limited to, any and all originals, copies or drafts or any and all of the following: records;
15 written testimonies; drafts; notes; summaries; schedules; drawings; sketches; diaries; reports;
16 memoranda of telephone or in-person conversations by or with any person, or other memoranda;
17 letters; facsimiles, or cables received; electronic mail and voice mail messages, drafts, originals or
18 copies of letters, tapes, transcripts or recordings; photographs, pictures of films; or other graphic,
19 recorded written material of whatever nature and other "writings" of any kind.

20 2. **POSSESSION, CUSTODY OR CONTROL.** Each request extends to
21 any documents in the **POSSESSION, CUSTODY OR CONTROL** of the Protestant,
22 Department of Fish and Game; and/or the Deponent. The document is deemed to be in Deponent
23 and/or Protestant's **POSSESSION, CUSTODY OR CONTROL**, if it is in the Deponent and/or
24 Protestant's physical custody., or if it is in the physical custody of any other person and Deponent
25 and/or Protestant (a) owns such document in whole or in part; (b) has a right by contract, statute
26 or otherwise to use, inspect, examine or copy such document on any terms; (c) has an
27 understanding, express or implied, that Deponent and/or Protestant may use, inspect, examine or
28 copy such document on any terms; or (d) has, as a practical matter, been able to use, inspect,

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1 examine or copy such document when Deponent and/or Protestant has sought to do so. Such
2 document shall include, without limitation, documents that are in the custody of Deponent and/or
3 Protestant's agents, employees or representatives.

4 3. **YOU, YOUR.** The terms "YOU" and "YOUR" refer to Protestant
5 Department of Fish and Game employee Debra Hillyard.

6 4. If any requested **DOCUMENT** or thing cannot be produced in full, it shall
7 be produced to the extent possible, indicating what **DOCUMENT** or portion of **DOCUMENTS**
8 are being withheld and the reason such **DOCUMENTS** are being withheld.

9 5. **DOCUMENTS** attached to each other should not be separated.

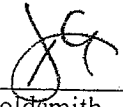
10 6. **DOCUMENTS** not otherwise responsive to this Request shall be produced
11 if such **DOCUMENTS** support, refer to, relate to, or explain the **DOCUMENTS** which are
12 called for by this Request, or if such **DOCUMENTS** are attached to **DOCUMENTS** called for
13 by this Request.

14 **DOCUMENTS TO BE PRODUCED**

15 1. All **DOCUMENTS** utilized or relied on to create, formulate or prepare
16 your conclusions, reports and/or opinions in this matter.

17 Dated: May 11, 2011

KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD
A Law Corporation

19
20 By: 
21 Janet K. Goldsmith
22 Danielle R. Teeters
23 Attorneys for James J. Hill
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1 PROOF OF SERVICE

2 I, Sherry Ramirez, declare:

3 I am a citizen of the United States and employed in Sacramento County, California. I am
4 over the age of eighteen years and not a party to the within-entitled action. My business address
5 is 400 Capitol Mall, 27th Floor, Sacramento, California 95814. On May 11, 2011, I served a
6 copy of the within document(s):

7 **NOTICE OF DEPOSITION OF DEBRA HILLYARD AND REQUEST FOR
8 PRODUCTION OF DOCUMENTS**

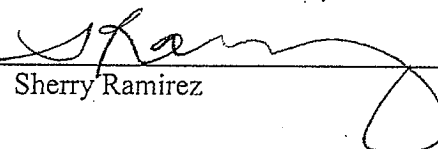
- 9 by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.
- 10 by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, the United States mail at Sacramento, California addressed as set forth below.
- 11 by placing the document(s) listed above in a sealed Delivery Service envelope and affixing a pre-paid air bill, and causing the envelope to be delivered to a Delivery Service agent for delivery.
- 12 by placing the document(s) listed above in a sealed Delivery Service envelope and affixing a pre-paid air bill, and causing the envelope to be delivered to a Delivery Service agent for delivery.
- 13 by transmitting via e-mail or electronic transmission the document(s) listed above to the person(s) at the e-mail address(es) set forth below.

14
15
16 *SEE ATTACHED*

17 I am readily familiar with the firm's practice of collection and processing correspondence
18 for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same
19 day with postage thereon fully prepaid in the ordinary course of business. I am aware that on
20 motion of the party served, service is presumed invalid if postal cancellation date or postage
21 meter date is more than one day after date of deposit for mailing in affidavit.

22 I declare under penalty of perjury under the laws of the State of California that the above
23 is true and correct.

24 Executed on May 11, 2011, at Sacramento, California.

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26 
27 _____
28 Sherry Ramirez

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SERVICE LIST

PAPER COPIES Division of Water Rights State Water Resources Control Board Attention: Paul Murphy P.O. Box 2000 Sacramento, CA 95812-2000	CALIFORNIA DEPARTMENT OF FISH & GAME c/o Kevin Takei & Chandra Ferrari 1416 Ninth Street, 12 th Floor Sacramento, CA 95814 KTakei@DFG.ca.gov CFerrari@DFG.ca.gov (916) 653-3715
ELECTRONIC COPIES Email: wrhearing@waterboards.ca.gov	
TROUT UNLIMITED c/o Brian Johnson 2239 5 th Street Berkeley, CA 94710 bjohnson@tu.org (510) 528-4772	CENTER FOR BIOLOGICAL DIVERSITY & VENTANTA WILDERNESS ALLIANCE c/o Adam Lazar 351 California Street, #600 San Francisco, CA 94104 alazar@biologicaldiversity.org (415) 436-9683
WALTER MOTZEL c/o Alexander Hubbard Hubbard & Hubbard, LLP 400 Camino Aguajito Monterey, CA 93940 AFHUBB@aol.com (831) 372-7571	LORI LOCKWOOD P.O. Box 264 Big Sur, CA 93920 loribigsure@aol.com (831) 667-2564

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1 JANET K. GOLDSMITH, State Bar No. 065959
jgoldsmith@kmtg.com
2 DANIELLE R. TEETERS, State Bar No. 210056
dteeters@kmtg.com
3 KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD
A Law Corporation
4 400 Capitol Mall, 27th Floor
Sacramento, California 95814
5 Telephone: (916) 321-4500
Facsimile: (916) 321-4555
6

7 Attorneys for Applicant James J. Hill III
8

9 BEFORE THE
10 STATE WATER RESOURCES CONTROL BOARD
11

12 **In the Matter of Water Right**
13 **Application No. 30166 of James J.**
14 **Hill, III**

NOTICE OF DEPOSITION OF ROBERT
G. TITUS AND REQUEST FOR
PRODUCTION OF DOCUMENTS

15
16 TO PROTESTANT DEPARTMENT OF FISH AND GAME AND ITS ATTORNEY (S) OF
17 RECORD:

18 PLEASE TAKE NOTICE that pursuant to Water Code section 1100, Government
19 Code sections 11450.10 and 11450.20, California Code of Civil Procedure section 2025.010 et
20 seq., and the procedures and practices of the State Water Resources Control Board, the deposition
21 of **ROBERT G. TITUS** will be taken by the Applicant James J. Hill III ("Applicant") in the
22 above entitled matter, upon oral examination before a certified shorthand reporter of the State of
23 California as follows:

24 DATE: June 2, 2011
25 TIME: 10:00 a.m.
26 LOCATION: Kronick Moskovitz Tiedemann & Girard
27 400 Capitol Mall, 27th Floor
Sacramento, CA 95814
28 916/321-4500

1 Said deposition will commence at the above date and time, and continue from day to day
2 thereafter, Sundays and holidays excepted, until completed. The Applicant reserves the right to
3 record this deposition by videotape.

4 DOCUMENT REQUEST

5 NOTICE IS FURTHER GIVEN that the above-described Deponent shall bring
6 and produce at the deposition, at the time and place set out above, the following listed writings
7 and other things identified below.

8 DEFINITIONS

9 As used herein, the following terms have the meaning and significance set forth
10 below, unless otherwise specifically indicated:

11 1. **DOCUMENT.** The terms "**DOCUMENT**" or "**DOCUMENTS**" shall
12 mean and include all written, recorded, or graphic materials, however produced or reproduced,
13 whether or not privileged, pertaining in any way to the subject matter of this action, including, but
14 not limited to, any and all originals, copies or drafts or any and all of the following: records;
15 written testimonies; drafts; notes; summaries; schedules; drawings; sketches; diaries; reports;
16 memoranda of telephone or in-person conversations by or with any person, or other memoranda;
17 letters; facsimiles, or cables received; electronic mail and voice mail messages; drafts, originals or
18 copies of letters, tapes, transcripts or recordings; photographs, pictures of films; or other graphic,
19 recorded written material of whatever nature and other "writings" of any kind.

20 2. **POSSESSION, CUSTODY OR CONTROL.** Each request extends to
21 any documents in the **POSSESSION, CUSTODY OR CONTROL** of the Protestant,
22 Department of Fish and Game; and or the Deponent. The document is deemed to be in
23 Deponent's and/or Protestant's **POSSESSION, CUSTODY OR CONTROL**, if it is in the
24 Protestant's physical custody., or if it is in the physical custody of any other person and Protestant
25 (a) owns such document in whole or in part; (b) has a right by contract, statute or otherwise to
26 use, inspect, examine or copy such document on any terms; (c) has an understanding, express or
27 implied, that Deponent and/or Protestant may use, inspect, examine or copy such document on
28 any terms; or (d) has, as a practical matter, been able to use, inspect, examine or copy such

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1 document when Deponent and/or Protestant has sought to do so. Such document shall include,
2 without limitation, documents that are in the custody of Deponent and/or Protestant's agents,
3 employees or representatives.

4 3. **YOU, YOUR.** The terms "YOU" and "YOUR" refer to Protestant
5 Department of Fish and Game employee Robert G. Titus.

6 4. If any requested **DOCUMENT** or thing cannot be produced in full, it shall
7 be produced to the extent possible, indicating what **DOCUMENT** or portion of **DOCUMENTS**
8 are being withheld and the reason such **DOCUMENTS** are being withheld.

9 5. **DOCUMENTS** attached to each other should not be separated.

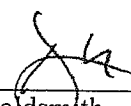
10 6. **DOCUMENTS** not otherwise responsive to this Request shall be produced
11 if such **DOCUMENTS** support, refer to, relate to, or explain the **DOCUMENTS** which are
12 called for by this Request, or if such **DOCUMENTS** are attached to **DOCUMENTS** called for
13 by this Request.

14 **DOCUMENTS TO BE PRODUCED**

15 1. All **DOCUMENTS** utilized or relied on to create, formulate or prepare
16 your written testimony, conclusions, reports and/or opinions in this matter.

17 Dated: May 11, 2011

18 KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD
19 A Law Corporation

20 By: 
21 Janet K. Goldsmith
22 Danielle R. Teeters
23 Attorneys for James J. Hill

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PROOF OF SERVICE

I, Sherry Ramirez, declare:

I am a citizen of the United States and employed in Sacramento County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 400 Capitol Mall, 27th Floor, Sacramento, California 95814. On May 11, 2011, I served a copy of the within document(s):

NOTICE OF DEPOSITION OF ROB TITUS AND REQUEST FOR PRODUCTION OF DOCUMENTS

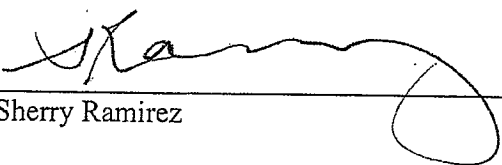
- by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.
- by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, the United States mail at Sacramento, California addressed as set forth below.
- by placing the document(s) listed above in a sealed Delivery Service envelope and affixing a pre-paid air bill, and causing the envelope to be delivered to a Delivery Service agent for delivery.
- by transmitting via e-mail or electronic transmission the document(s) listed above to the person(s) at the e-mail address(es) set forth below.

SEE ATTACHED

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on May 11, 2011, at Sacramento, California.



 Sherry Ramirez

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SERVICE LIST

PAPER COPIES Division of Water Rights State Water Resources Control Board Attention: Paul Murphy P.O. Box 2000 Sacramento, CA 95812-2000	CALIFORNIA DEPARTMENT OF FISH & GAME c/o Kevin Takei & Chandra Ferrari 1416 Ninth Street, 12 th Floor Sacramento, CA 95814 KTakei@DFG.ca.gov CFerrari@DFG.ca.gov (916) 653-3715
ELECTRONIC COPIES Email: wrhearing@waterboards.ca.gov	
TROUT UNLIMITED c/o Brian Johnson 2239 5 th Street Berkeley, CA 94710 bjohnson@tu.org (510) 528-4772	CENTER FOR BIOLOGICAL DIVERSITY & VENTANTA WILDERNESS ALLIANCE c/o Adam Lazar 351 California Street, #600 San Francisco, CA 94104 alazar@biologicaldiversity.org (415) 436-9683
WALTER MOTZEL c/o Alexander Hubbard Hubbard & Hubbard, LLP 400 Camino Aguajito Monterey, CA 93940 AFHUBB@aol.com (831) 372-7571	LORI LOCKWOOD P.O. Box 264 Big Sur, CA 93920 loribigsure@aol.com (831) 667-2564

1 JANET K. GOLDSMITH, State Bar No. 065959
jgoldsmith@kmtg.com
2 DANIELLE R. TEETERS, State Bar No. 210056
dteeters@kmtg.com
3 KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD
A Law Corporation
4 400 Capitol Mall, 27th Floor
Sacramento, California 95814
5 Telephone: (916) 321-4500
Facsimile: (916) 321-4555
6

7 Attorneys for Applicant James J. Hill III
8

9 BEFORE THE
10 STATE WATER RESOURCES CONTROL BOARD
11

12 **In the Matter of Water Right**
13 **Application No. 30166 of James J.**
14 **Hill, III**

15 **NOTICE OF DEPOSITION OF KIT**
16 **CUSTIS AND REQUEST FOR**
17 **PRODUCTION OF DOCUMENTS**

18 TO PROTESTANT DEPARTMENT OF FISH AND GAME AND ITS ATTORNEY(S) OF
19 RECORD:

20 PLEASE TAKE NOTICE that pursuant to Water Code section 1100, Government
21 Code sections 11450.10 and 11450.20, California Code of Civil Procedure section 2025.010 et
22 seq., and the procedures and practices of the State Water Resources Control Board, the deposition
23 of **KIT CUSTIS** will be taken by the Applicant James J. Hill III ("Applicant") in the above
entitled matter, upon oral examination before a certified shorthand reporter of the State of
California as follows:

24
25 DATE: May 25, 2011
26 TIME: 10:00 a.m.
27 LOCATION: Kronick Moskovitz Tiedemann & Girard
400 Capitol Mall, 27th Floor
Sacramento, CA 95814
28 916/321-4500

1 Said deposition will commence at the above date and time, and continue from day to day
2 thereafter, Sundays and holidays excepted, until completed. The Applicant reserves the right to
3 record this deposition by videotape.

4 **DOCUMENT REQUEST**

5 NOTICE IS FURTHER GIVEN that the above-described deponent shall bring and
6 produce at the deposition, at the time and place set out above, the following listed writings and
7 other things identified below.

8 **DEFINITIONS**

9 As used herein, the following terms have the meaning and significance set forth
10 below, unless otherwise specifically indicated:

11 1. **DOCUMENT.** The terms "**DOCUMENT**" or "**DOCUMENTS**" shall
12 mean and include all written, recorded, or graphic materials, however produced or reproduced,
13 whether or not privileged, pertaining in any way to the subject matter of this action, including, but
14 not limited to, any and all originals, copies or drafts or any and all of the following: records;
15 notes; summaries; schedules; drawings; sketches; diaries; reports; memoranda of telephone or in-
16 person conversations by or with any person, or other memoranda; letters; facsimiles, or cables
17 received; electronic mail and voice mail messages, drafts, originals or copies of letters, tapes,
18 transcripts or recordings; photographs, pictures of films; or other graphic, recorded written
19 material of whatever nature and other "writings" of any kind.

20 2. **POSSESSION, CUSTODY OR CONTROL.** Each request extends to
21 any documents in the **POSSESSION, CUSTODY OR CONTROL** of the Protestant,
22 Department of Fish and Game. The document is deemed to be in Protestant's **POSSESSION,**
23 **CUSTODY OR CONTROL**, if it is in the Protestant's physical custody., or if it is in the
24 physical custody of any other person and Protestant (a) owns such document in whole or in part;
25 (b) has a right by contract, statute or otherwise to use, inspect, examine or copy such document on
26 any terms; (c) has an understanding, express or implied, that Protestant may use, inspect, examine
27 or copy such document on any terms; or (d) has, as a practical matter, been able to use, inspect,
28 examine or copy such document when Protestant has sought to do so. Such document shall

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1 include, without limitation, documents that are in the custody of Protestant's agents, employees or
2 representatives.

3 3. **YOU, YOUR.** The terms "YOU" and "YOUR" refer to Protestant
4 Department of Fish and Game employee/contractor/retired annuitant Kit Custis.

5 4. If any requested **DOCUMENT** or thing cannot be produced in full, it shall
6 be produced to the extent possible, indicating what **DOCUMENT** or portion of **DOCUMENTS**
7 are being withheld and the reason such **DOCUMENTS** are being withheld.

8 5. **DOCUMENTS** attached to each other should not be separated.

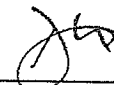
9 6. **DOCUMENTS** not otherwise responsive to this Request shall be produced
10 if such **DOCUMENTS** support, refer to, relate to, or explain the **DOCUMENTS** which are
11 called for by this Request, or if such **DOCUMENTS** are attached to **DOCUMENTS** called for
12 by this Request.

13 **DOCUMENTS TO BE PRODUCED**

14 1. All **DOCUMENTS** utilized or relied on to create, formulate or prepare
15 your written testimony, conclusions, reports and/or opinions in this matter.

16 Dated: May 11, 2011

17 KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD
18 A Law Corporation

19 By: 
20 Janet K. Goldsmith
21 Danielle R. Teeters
22 Attorneys for James J. Hill

1 **PROOF OF SERVICE**

2 I, Sherry Ramirez, declare:

3 I am a citizen of the United States and employed in Sacramento County, California. I am
4 over the age of eighteen years and not a party to the within-entitled action. My business address
5 is 400 Capitol Mall, 27th Floor, Sacramento, California 95814. On May 11, 2011, I served a
6 copy of the within document(s):

7 **NOTICE OF DEPOSITION OF KIT CUSTIS AND REQUEST FOR
8 PRODUCTION OF DOCUMENTS**

- 9 by transmitting via facsimile the document(s) listed above to the fax number(s) set
10 forth below on this date before 5:00 p.m.
- 11 by placing the document(s) listed above in a sealed envelope with postage thereon
12 fully prepaid, the United States mail at Sacramento, California addressed as set
13 forth below.
- 14 by placing the document(s) listed above in a sealed Delivery Service envelope and
15 affixing a pre-paid air bill, and causing the envelope to be delivered to a Delivery
16 Service agent for delivery.
- 17 by transmitting via e-mail or electronic transmission the document(s) listed above
18 to the person(s) at the e-mail address(es) set forth below.

19 *SEE ATTACHED*

20 I am readily familiar with the firm's practice of collection and processing correspondence
21 for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same
22 day with postage thereon fully prepaid in the ordinary course of business. I am aware that on
23 motion of the party served, service is presumed invalid if postal cancellation date or postage
24 meter date is more than one day after date of deposit for mailing in affidavit.

25 I declare under penalty of perjury under the laws of the State of California that the above
26 is true and correct.

27 Executed on May 11, 2011, at Sacramento, California.

28 

Sherry Ramirez

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SERVICE LIST

<p>PAPER COPIES Division of Water Rights State Water Resources Control Board Attention: Paul Murphy P.O. Box 2000 Sacramento, CA 95812-2000</p>	<p>CALIFORNIA DEPARTMENT OF FISH & GAME c/o Kevin Takei & Chandra Ferrari 1416 Ninth Street, 12th Floor Sacramento, CA 95814 KTakei@DFG.ca.gov CFerrari@DFG.ca.gov (916) 653-3715</p>
<p>ELECTRONIC COPIES Email: wrhearing@waterboards.ca.gov</p>	
<p>TROUT UNLIMITED c/o Brian Johnson 2239 5th Street Berkeley, CA 94710 bjohnson@tu.org (510) 528-4772</p>	<p>CENTER FOR BIOLOGICAL DIVERSITY & VENTANTA WILDERNESS ALLIANCE c/o Adam Lazar 351 California Street, #600 San Francisco, CA 94104 alazar@biologicaldiversity.org (415) 436-9683</p>
<p>WALTER MOTZEL c/o Alexander Hubbard Hubbard & Hubbard, LLP 400 Camino Aguajito Monterey, CA 93940 AFHUBB@aol.com (831) 372-7571</p>	<p>LORI LOCKWOOD P.O. Box 264 Big Sur, CA 93920 loribigsure@aol.com (831) 667-2564</p>

Attachment B

From: "Ramirez, Sherry" <SRamirez@kmtg.com>
To: loribigsur@aol.com; AFHUBB@aol.com; alazar@biologicaldiversity.org; bjoh...
CC: DTeeters@kmtg.com
Date: 5/11/2011 1:16 PM
Subject: Matter of Water Right Application No. 30166 of James J. Hill, III
Attachments: Notice of Deposition of DebraHillyard and Req for Production of Docs.PDF; Notice of Deposition of RobertTitus and Req for Production of Docs.PDF; Notice of Deposition of Kit Custis and Req for Production of Docs.PDF

Attached please find Deposition Notices of Kit Custis, Debra Hillyard and Robert G. Titus. A copy will follow by mail. Please feel free to contact our offices with any questions. Thank you.

The information contained in this E-mail is confidential and may also contain privileged attorney-client information or work product. The information is intended only for the use of the individual or entity to whom it is addressed. If you are not the intended recipient, or the employee or agent responsible to deliver it to the intended recipient, you are hereby notified that any use, dissemination, distribution or copying of this communication is strictly prohibited. If you have received this E-mail in error, please delete this message from your computer and immediately notify the sender. Thank you.

Attachment C

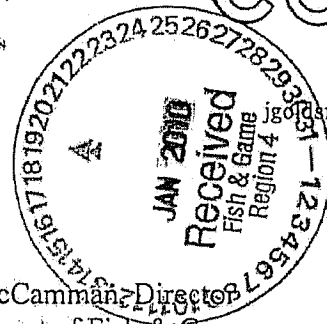
KRONICK
MOSKOVITZ
STIEDEMANN
& GIRARD
A PROFESSIONAL CORPORATION

JANET K. GOLDSMITH

COPY

(916) 321-4500
jgoldsmith@kmtg.com

January 13, 2010



Kristine Van Keuren
Public Records Act Coordinator
Office of General Counsel
Department of Fish & Game
1416 Ninth Street, 12th Floor, Suite 1341
Sacramento, CA 95814

John McCamman, Director
Department of Fish & Game
1416 Ninth Street
Sacramento, CA 95814

Re: Public Records Act Request

Dear Ms. Van Keuren and Mr. McCamman:

Pursuant to the California Public Records Act (Chapter 3.5 of Division 7 of Title 1 of the California Government Code), I request copies of any public record in the possession or control of the Department of Fish and Game ("Department"), including records of the Fish and Game Commission ("Commission"); that are responsive to the numbered categories below.

The scope of this request includes all public records including, but not limited to, all public records of the Department including agendas and agenda packets, minutes of Commission hearings, meetings, workshops or similar activities; drafts, communications of every nature, letters, e-mails and other electronic communications, notes of telephone calls, contracts, raw data or spreadsheets of data containing information responsive to the requests, reports, maps, schedules both past and future; publications, and reports or other documents reviewed or relied on by Department, Commission and/or Commission staff.

1. All documents related to formulation and adoption of fishing regulations applicable to the Big Sur River, including low-flow restrictions contained in 14 CCR section 8.00 for Big Sur River.
2. All public records related to the Department's interim flow recommendation, set forth in its comments to the Draft Environmental Impact Report on Water Right Application 30166 ("DEIR").
3. All public records, including drafts and communications, related to the development, funding and/or implementation of the study plan entitled "Habitat and Instream Flow Relationships for Steelhead in the Big Sur River, Monterey County, September 2009" submitted as an attachment to the Department's comments to the DEIR.

ATTORNEYS AT LAW

400 CAPITOL MALL, 27th FLOOR SACRAMENTO, CALIFORNIA 95814-4416 TELEPHONE (916) 321-4500 FAX (916) 321-4555

4. All data and other public records collected to date as part of the study of "Habitat and Instream Flow Relationships for Steelhead in the Big Sur River, Monterey County, September 2009" as stated in the Department's "Detailed comments from California Department of Fish & Game on the DEIR for El Sur Ranch Water Right Application 30166." ("Detailed Comments")

5. All data collected by or on behalf of the Department or its contractors and all other public records concerning "critical riffles, downstream of the Molera Creek campground, according to the Thompson method" as identified in the Department's "Detailed Comments."

6. All data collected from the Big Sur River and all other public records that relate to the Department's following assertion in the "Detailed Comments": "DFG's preliminary data also show a reduction in densities of fish with reductions in water flow. Reductions in water flow reduce the availability and quality of prey available to steelhead for maintenance and growth."

7. All data and other public records related to the Department's following assertion in its "Detailed Comments": "DFG has files of stream surveys, creel surveys, reports, and investigations dating back to surveys conducted by Shapovalov and Taft on the Big Sur in 1945."

8. All public records related to the assertion, on page 1 of the Department's "Detailed Comments" that "the Old Well was relocated and reconstructed."

9. All public records related to the Department's assertion in its "Detailed Comments" that "comparable sites in coastal Monterey typically utilize 2 AFA for irrigated pasture. . . ."

10. All public records that contributed to the Department's recommendation for interim flows of "40 cfs for the months of June through November as measured at the USGS gauge and 132 cfs for the months of December through May, as measured at the USGS gauge" as set forth in its December 14, 2009 Memorandum from Jeffrey R. Single, Ph.D. to Paul Murphey, commenting on the DEIR.

11. The report titled *The Use of Bioassessment to Determine the Biotic Condition of Two Sites on the Big Sur River, Monterey County, Ca*, December 2009 by Jim Harrington, cited in the Department's "Detailed Comments"

12. All data or other public records relating to the Anadromous Sport Fish Management and Research Program, Project #55 cited in the Department's "Detailed Comments".

13. Research, data or other public records concerning "Post-Fire Baseline Monitoring of Big Sur River Lagoon: November/December 2008, Watershed Institute, Publication No WI-22008-7", described in the Department's "Detailed Comments".

Department of Fish & Game
January 13, 2010
Page 3

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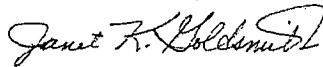
14. All data or other public records supporting the DFG assertion in the Detailed Comments", that "Increased irrigation efficiency would allow the applicant to make better use of the more limited amount and rates of diversion which are proposed under this new alternative and could allow more optimal forage production."

If the Department or Commission claims that a record responsive to the above requests is exempt from inspection pursuant to the Public Records Act, please identify the record and the exemption that is claimed.

Thank you very much for your prompt reply to this request.

Sincerely,

KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD
A Law Corporation



Janet K. Goldsmith

JKG:ll

cc: Dr. Jeffrey R. Single
Regional Manager, DFG Central Region
1234 E. Shaw Avenue
Fresno, CA 93710

930487 2 8896.2



(916) 321-4500
jgoldsmith@kmtg.com

April 20, 2010

VIA E-MAIL AND U.S. POST

Kristine Van Keuren
Department of Fish & Game
1416 Ninth Street, Suite 1341
P.O. Box 944209
Sacramento, CA 95814

John McCamman, Director
Department of Fish & Game
1416 Ninth Street, Suite 1341
Sacramento, CA 95814

Chandra Ferrari, Counsel
Department of Fish & Game
1416 Ninth Street, Suite 1341
P.O. Box 944209
Sacramento, CA 95814

Re: Public Record Act Request

Dear Ms. Van Keuren, Ms. Ferrari and Mr. McCamman:

Pursuant to the California Public Records Act (Chapter 3.5 of Division 7 of Title 1 of the California Government Code), I request a complete copy of the below-named report and any public record in the possession or control of the Department of Fish and Game ("Department") containing data that were collected or used in the study identified in the following memorandum:

Titus, R.G. 1994. "Progress on Big Sur Steelhead Habitat Use Study and Related Work. California Department of Fish and Game Memorandum" dated approximately August 3, 1994.

An incomplete copy of this Memorandum is attached to this request, for your convenience.

The Memorandum references (at page 8, 2d ¶) another, unpublished, memorandum dated 12 August 1993 by R. G. Titus, a copy of which, including any tables and appendices and related field data, is also requested.

Further, the Memorandum (at page 11, 1st ¶) notes that further work on the Big Sur River Steelhead Habitat Use Study, using PIT (passive integrated transponder) tags was planned to be conducted by the Department in 1994-1995. It is requested that all records related to such further work (whether done in 1994-1995 or subsequently) be provided as well.

ATTORNEYS AT LAW

400 CAPITOL MALL, 27TH FLOOR SACRAMENTO, CALIFORNIA 95814 TELEPHONE (916) 321-4500 FAX (916) 321-4555
1675 CHESTER AVENUE, SUITE 320 BAKERSFIELD, CALIFORNIA 93301 TELEPHONE (661) 864-3800 FAX (661) 864-3810
1432 HIGUERA STREET SAN LUIS OBISPO, CALIFORNIA 93401 TELEPHONE (805) 786-4302 FAX (805) 786-4319

www.kmtg.com

Chandra Ferrari, Counsel
April 20, 2010
Page 2

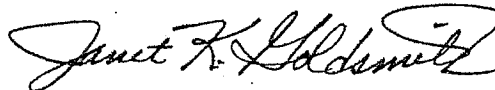
8896-2

The scope of this request includes the above-referenced documents, all drafts of such documents, all data, maps, photographs, spreadsheets, graphs, field notes and presentations or other public records of the Department containing information responsive to the request.

Please provide records responsive to this request in electronic format (such as excel spreadsheets, for example), where such format exists. Thank you very much for your prompt reply to this request.

Sincerely,

KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD
A Professional Corporation



Janet K. Goldsmith

JKG/ll
938594.1 8896.2

KRONICK
MOSKOVITZ
& TIEDEMANN
& GIRARD
A LAW CORPORATION

JANET K. GOLDSMITH
jgoldsmith@kmtg.com

(916) 321-4500
jgoldsmith@kmtg.com

December 28, 2010

VIA E-MAIL AND U.S.P.S.

Kristine Van Keuren
Department of Fish & Game
1416 Ninth Street, Suite 1341
P.O. Box 944209
Sacramento, CA 95814

John McCamman, Director
Department of Fish & Game
1416 Ninth Street, Suite 1341
Sacramento, CA 95814

Chandra Ferrari, Counsel
Department of Fish & Game
1416 Ninth Street, Suite 1341
P.O. Box 944209
Sacramento, CA 95814

Re: Public Record Act Request

Dear Ms. Van Keuren, Ms. Ferrari and Mr. McCamman:

Pursuant to the California Public Records Act (Chapter 3.5 of Division 7 of Title 1 of the California Government Code), I request a complete copy of the reports/plans/data ("reports") set forth below, including any public records in the possession or control of the Department of Fish and Game ("Department") containing the documents that were collected or used in the reports:

1. "Study Plan: Habitat and Instream Flow Relationships for Steelhead in the Big Sur River, Monterey County September 2009."
2. "Stream Cross-Sectional Data collected during 1992-1995 juvenile steelhead habitat surveys of the Big Sur River by the Department."

The reports were referenced in correspondence dated December 23, 2010, entitled "Protest Dismissal, Interim Minimum Bypass Low Requirements for Juvenile Steelhead Rearing, El Sur Ranch Water Right Permit Application No. 30166, Big Sur River, Monterey County," from Jeffrey R. Single, Ph.D., Regional Manager, to El Sur Ranch representatives. A copy of the correspondence is attached hereto for your convenience.

Additionally, I request the following:

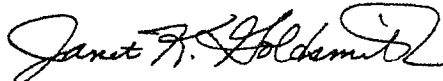
- All documents, including but not limited to all emails, data, surveys, studies, measurements and analyses, reports, plans, photographs, spreadsheets, graphs, field notes, presentation, meeting notes and agendas, task force meeting agendas and notes, and any public records pertaining to or used to formulate the Department's proposed interim bypass flow requirements, including the wetted perimeter analysis and estimate of potential upstream losses as referenced in the attached correspondence.
- All documents, including, but not limited to, all emails, data, surveys, studies, measurements and analyses, reports, plans, photographs, spreadsheets, graphs, field notes, presentation, meeting notes and agendas, task force meeting agendas and notes, and any public records relied on, produced, and/or gathered by the Department of Fish and Game related or pertaining to the El Sur Ranch Water Right Permit Application No. 30166, Big Sur River, Monterey County, excepting all documents already produced in our prior Public Records Act requests dated January 13, 2010 and April 20, 2010

The scope of this request includes the above-referenced documents, all drafts of such documents, all emails, data, surveys, studies, measurements and analyses, maps, photographs, spreadsheets, graphs, field notes and presentations, task force agendas and meeting notes, and/or other public records of the Department containing information responsive to this request that has not already been provided in response to our previous requests dated January 13, 2010 and April 20, 2010.

Please provide records responsive to this request in electronic format (such as electronic portable document format (or "pdf"), excel spreadsheet), where such format exists. Thank you very much for your prompt reply to this request.

Sincerely,

KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD
A Professional Corporation



Janet K. Goldsmith

JKG/II
959300.1 8896.2

From: Megan Penick
To: dteeters@kmtg.com
CC: Kevin Takei
Date: 5/9/2011 1:58 PM
Subject: Public Records Act Request No. 11-05-130

May 9, 2011

Re: Public Records Act Request No. 11-05-130

Dear Ms. Teeters:

This letter is in response to your Public Records Act ("PRA") request received by the Department of Fish and Game on May 05, 2011, seeking copies of records relating to El Sur Ranch.

The Department has determined it will comply with your request by providing you copies of all responsive documents that are not exempt from disclosure. After the Department has located and assembled any non-exempt responsive documents, we will contact you to make arrangements for delivering the documents to you.

Please note that the Department charges a photocopying fee of \$.15 per page, in addition to shipping and handling costs. The Department does not have a policy that allows us to waive or reduce these fees and costs. If you would like copies of any documents, we will identify the total amount that must be paid to the Department before we send you copies of the documents you have requested. Documents located in response to your request can always be reviewed at the location where they are held without charge.

If you have any questions regarding this matter or would like to know the status of your request, please contact me at mpenick@dfg.ca.gov, and reference PRA number 11-05-130.

Sincerely,

Megan Penick
Public Records Act Officer

From: Megan Penick
To: Chandra Ferrari
Date: 5/12/2011 12:57 PM
Subject: And then 10-05-130

>>> Megan Penick 5/12/2011 12:56 PM >>>

>>> Kevin Takei 5/9/2011 1:23 PM >>>

>>> "Teeters, Danielle R." <DTeeters@kmtg.com> Thursday, May 05, 2011 11:14 AM >>>
Kevin:

It is difficult to understand how a map of the data collection sites could be made from the "general location" points and other information provided in your emails from March 28 and 29 2011. There is not enough information contained in those two documents, or any other documents DFG has already produced for anyone to discern where the study and data collection occurred.

We therefore again request any documents related to, concerning, or showing the location of data collection sites or survey sites, including, but not limited to, USGS topo maps/sheets, base maps, hand drawn maps, or any documents showing the locations, landmarks, and/or access areas near or at the data collection sites and/or survey sites, written descriptions of where data collection and/or survey sites were located and how to get to them, parks department maps, field maps or notes, or any document that indicates directions where to find the data collection and/or survey sites; photos of the data collection and/or survey locations; a form that identifies exactly where the start and end data collection and/or survey sites are located to include mileage or any other kind of measurement that indicates how to reach the sites; printed aerial photographs, satellite photos or any other photos that indicate orientation, locations, or landmarks where the data collection and/or survey sites are located.

Please produce these materials as soon as possible. If you have any questions, please let me know. Thank you.

-Danielle

The information contained in this E-mail is confidential and may also contain privileged attorney-client information or work product. The information is intended only for the use of the individual or entity to whom it is addressed. If you are not the intended recipient, or the employee or agent responsible to deliver it to the intended recipient, you are hereby notified that any use, dissemination, distribution or copying of this communication is strictly prohibited. If you have received this E-mail in error, please delete this message from your computer and immediately notify the sender. Thank you.

-----Original Message-----

From: Kevin Takei [<mailto:KTAKET@dfg.ca.gov>]

Sent: Monday, May 02, 2011 1:57 PM

To: Teeters, Danielle R.

Cc: Chandra Ferrari; Jolie-Anne S. Ansley; Thomas M. Berliner; Mark Blum; Goldsmith, Janet K.

1 Chandra Ferrari, CA Bar No. 246012
Staff Counsel
2 Department of Fish and Game
1416 9th Street
3 Sacramento, California 95814
Telephone: (916)654-3819
4 Facsimile: (916) 654-3805
Email: cferrari@dfg.ca.gov
5

6 STATE OF CALIFORNIA
7 STATE WATER RESOURCES CONTROL BOARD
8

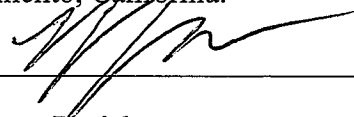
9 In the Matter of:)
10 Hearing Regarding Water Right Application) CERTIFICATE OF SERVICE
11 30166 of El Sur Ranch)
12)
13)
14)

15 _____
16 I am a resident of the State of California and over the age of eighteen years, and not a
17 party to the within action. My business address is the Office of General Counsel, Department of
18 Fish & Game, 1416 Ninth Street, Suite 1341, Sacramento, California, 95814. On May 13, 2011, I
19 served the following documents:

20 NOTICE OF MOTION TO QUASH NOTICES OF DEPOSITIONS OF KIT CUSTIS,
21 DEBORAH HILLYARD AND ROB TITUS AND FOR PROTECTIVE ORDER TO LIMIT
22 DISCOVERY; MEMORANDUM OF POINTS AND AUTHORITIES, DECLARATION OF
CHANDRA FERRARI AND PROPOSED ORDER

23 by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid,
24 in the United States mail at Sacramento, California, addressed as set forth below in the attached
Service List.

1 I declare under penalty of perjury under the laws of the State of California that the above
2 is true and correct. Executed on May 13, 2011, at Sacramento, California.



4 Megan Penick

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HEARING REGARDING WATER RIGHT APPLICATION 30166 FILED BY EL SUR RANCH
(BIG SUR RIVER) – MONTEREY COUNTY

SCHEDULED TO COMMENCE ON
JUNE 16, 2011

SERVICE LIST
(March 1, 2011)

PARTICIPANTS TO BE SERVED WITH WRITTEN TESTIMONY, EXHIBITS AND OTHER DOCUMENTS. (Note: The participants listed below agreed to accept electronic service, pursuant to the rules specified in the hearing notice.)

<p>EL SUR RANCH c/o Janet Goldsmith & Tom Berliner Kronick, Moskovitz, Tiedmann & Girard 400 Capitol Mall, 27th Floor Sacramento, CA 95814 jgoldsmith@kmtg.com tmberliner@duanemorris.com (916) 321-4500</p>	<p>CALIFORNIA DEPARTMENT OF FISH & GAME c/o Kevin Takei & Chandra Ferrari 1416 Ninth Street, 12th Floor Sacramento, CA 95814 KTakei@DFG.ca.gov CFerrari@DFG.ca.gov (916) 653-3715</p>
<p>TROUT UNLIMITED c/o Brian Johnson 2239 5th Street Berkeley, CA 94710 bjohnson@tu.org (510) 528-4772</p>	<p>CENTER FOR BIOLOGICAL DIVERSITY & VENTANA WILDNERNESS ALLIANCE c/o Adam Lazar 351 California Street, # 600 San Francisco, CA 94104 alazar@biologicaldiversity.org (415) 436-9683</p>
<p>WERNER MOTZEL c/o Alexander Hubbard Hubbard & Hubbard, LLP 400 Camino Aguajito Monterey, CA 93940 AFHUBB@aol.com (831) 372-7571</p>	<p>LORRI LOCKWOOD P.O. Box 264 Big Sur, CA 93920 lorribigsur@aol.com (831) 667-2564</p>

<p>CALIFORNIA SPORTFISHING PROTECTION ALLIANCE c/o Michael Jackson P.O. Box 207 Quincy, CA 95971 miatty@sbcglobal.net (530) 283-1007</p>	<p>CARMEL RIVER STEELHEAD ASSOCIATION c/o/ Brian LeNeve P.O. Box 1012 Carmel, CA 93921 bleneve@att.net (831) 624-8497</p>
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