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September 22, 2009

VIA ELECTRONIC MAIL

Mr. Lester Snow
Director
California Department of Water Resources
1416 Ninth Street
Sacramento, California 94236-0001

Re: Request to Recognize the Los Angeles Gateway Region (“Gateway Region”) as the Integrated Regional Water Management Plan Region (“Region”) for the Southeast Portion of Los Angeles County

Dear Mr. Snow:

The Gateway Integrated Regional Water Management Joint Powers Authority (“Gateway Authority”) hereby requests that you reject the recommendation to deny the Gateway Authority’s application to be the Regional Water Management Group for the Southeast portion of Los Angeles County and delete this area from the boundaries of the proposed Greater Los Angeles County Region (“GLAC Region”) for purposes of developing an Integrated Regional Water Management Plan (“IRWMP”). The Gateway Authority contends that the recommendations you have received are not legally defensible for the following reasons: I) The Gateway Region clearly meets the required criteria to be recognized as a Region; and II) The recommendation to not recognize the Gateway Region as its own Region provides no supporting rationale and thus is arbitrary, capricious and not legally supportable.

I. The Gateway Region Meets the Criteria Developed by the Department of Water Resources (“DWR”) and Should be Approved

The Final Region Acceptance Process Guidelines (“Guidelines”) adopted by DWR provide four primary criteria for recognizing a Region. The Gateway Region meets all of these criteria, which are summarized below:

Criterion 1: A Region should be the “*largest defined contiguous geographic area encompassing the service areas of multiple local agencies in order to maximize opportunities to integrate water management activities.*”

The Gateway Region is a very large and diverse area representing six percent (6%) of the state’s population and includes approximately two million residents, nearly one million of whom reside in disadvantaged communities. This area contains 26 cities and

Mr. Lester Snow
September 22, 2009
Page 2

many water purveyors. The Gateway Region is also essentially coterminous with the Central Groundwater Basin.

As discussed in DWR Bulletins 104 and 118, the Central Groundwater Basin is recognized by the State of California as a separate hydrologic unit. The Gateway Region overlies this basin. The Central Basin is one of five independent adjudicated basins in the vast area of Los Angeles County. Each of these basins was adjudicated as a separate area because groundwater production within the basin is mutually impactive and each basin is hydrogeologically independent. Each basin is governed by a separate judgment, with continuing judicial supervision and court-appointed watermasters. Accordingly, each of those basins is particularly suitable for development and implementation of an IRWMP.

This principal has been recognized in the Antelope Valley, and an IRWMP has already been adopted for that self-contained groundwater basin. Like the Antelope Valley, the Gateway Region covers a separate groundwater basin and is well suited for integrated regional planning. Thus, the Gateway Region, which includes virtually the entire Central Basin, clearly satisfies the first criterion for an IRWMP Region.

Criterion 2: A Region should be inclusive and utilize a *“collaborative multi-stakeholder process that provides mechanisms to assist disadvantaged communities address water management issues.”*

The Gateway Authority was formed at the direction of the Board of Directors of the Gateway Cities Council of Governments (“Gateway COG”). The Gateway COG is comprised of elected officials of the 27 cities in Southeast Los Angeles County. Unlike many areas of the state, which are largely unincorporated or undeveloped and in which cities are separated by significant distances, the jurisdictional boundaries of the 26 mainland (excluding Avalon on Catalina Island) Gateway Region cities are adjoining and govern the majority of land area of the Gateway Region. The Gateway COG represents the Region’s municipal water rights holders and land use authorities and encouraged and directed creation of the Gateway Authority to provide for the Gateway Region’s water management planning needs.

The Gateway Authority is a joint powers Authority whose board includes representatives of cities in the Region, many of which are disadvantaged communities. The Gateway Authority engages in continuous outreach to other disadvantaged communities. For instance, the Gateway Authority Board unanimously approved applying for a \$10 million ARRA grant for a Los Angeles River catch basin retrofit project despite the fact that the grant includes a majority of cities that are not yet

Mr. Lester Snow
September 22, 2009
Page 3

Gateway Authority members and excludes (for tributary reasons) some cities that are Gateway Authority members. The fact that all of the Gateway Authority's members approved this application and unanimously agreed, after securing the funding, to provide proportionally greater ARRA funds to cities that are disadvantaged, clearly demonstrates that the Gateway Authority works cooperatively and conscientiously to assist disadvantaged communities in addressing water management issues.

Criterion 3: A Region should be an area that *“encompasses a water system containing natural and man-made components with diverse water management issues that are included in a single collaborative water management portfolio prioritized on a shared vision of regional goals and objectives, and considers watershed areas and or physical location of water resources and infrastructure.”*

As discussed in Criterion 1, the Gateway Region is virtually coterminous with the adjudicated Central Groundwater Basin. This alone provides sufficient reason to justify approval of the Gateway Region. Hydrogeological components aside, the Gateway Region is unified by its unique socioeconomic and aging infrastructure challenges. In addition, it is governed by one flood control district.

A review of our application shows that the member cities of the Gateway Authority have a shared vision of regional goals and objectives, even though they have individual stakeholder priorities. The Gateway Region has a long history of collaborative water management, as evidenced by the successful raising of the Los Angeles River flood control levees (the LACDA project) and the formation of the Southeast Water Coalition to maintain and protect the quality and reliability of the Central Groundwater Basin. Furthermore, the Gateway Authority is currently administering a self-funded Metals TMDL monitoring and implementation plan for the Lower San Gabriel River, a TMDL that directly affects only a fraction of the Gateway Authority members, but is nonetheless an improvement of water quality and consequently a Gateway Authority priority.

Criterion 4: A Region should *“demonstrate a reasonable and effective governance structure for developing and implementing its IRWM plan.”*

In 2006, some of the cities in the Gateway Region, at the behest of DWR, signed an MOU with the GLAC group. These Gateway Region cities agreed to sign the MOU only for the limited purpose of applying for Proposition 50 funding. These cities were unwilling to sign a broader MOU because the needs of the cities in the Central Basin were different than the needs of the other areas of Los Angeles County included in the

Mr. Lester Snow
September 22, 2009
Page 4

GLAC Region and because the needs of the Gateway Region cities have historically been ignored by the larger County-wide planning entities.

Not surprisingly, the needs of the Gateway Region cities were once again ignored in the Proposition 50 grant review process. The GLAC Gateway area representatives spent many hours evaluating projects and establishing priorities for the Proposition 50 projects. Nevertheless, the GLAC governing board completely ignored the recommendations of the Gateway cities and failed to provide them notice of the meeting at which the final application decisions were made or to afford them an opportunity to be heard. The final decision was biased in favor of the more powerful and larger entities.

This preemptory action destroyed what little trust the Gateway cities had in the GLAC governance structure. The Gateway Cities withdrew from the GLAC, did not sign the most recent GLAC MOU and formed the Gateway Authority. DWR's recommendation to subsume the Gateway Region within the GLAC Region contains an admonition that GLAC must reach out and work with the Gateway cities in order to develop trust. Thus, even DWR's staff recognizes that the GLAC Region governing structure has not adequately addressed the Gateway cities' needs.

Under California law, a joint powers Authority exercises powers common to all its members. Each of the Gateway Authority's members has the requisite water rights and land use authority necessary to implement water projects within its boundaries, and thus the Gateway Authority can exercise these powers within the entire area governed by its members.

The legislative scheme for developing IRWMP's and approving IRWMP Regions, provides that "nothing in this part affects any powers granted to a local public agency by any Authority other than this part." *California Water Code Section 10545*. Formation of the Gateway Authority established our authority for water planning and project implementation in the Gateway Region. The DWR does not have the power to transfer this Authority to the GLAC Region.

Planning for and implementing IRWMP projects in the Central Basin requires the cooperation and consent of the holders of the Central Basin groundwater rights. Such consent has been granted only to the Gateway Authority. Despite this fact, the GLAC Region's representatives persist in contending that the GLAC represents the Gateway Region entities. The GLAC does not represent us and has no authority to plan for or implement projects requiring the cooperation of the cities in the Gateway Region. The

Mr. Lester Snow
September 22, 2009
Page 5

Gateway Authority is the only effective governance structure for the development and implementation of an IRWMP in the Gateway Region.

II. The Recommendation to Deny Gateway’s Application Contains No Evidence Supporting the Recommendation and is Arbitrary and Capricious

A government entity, including DWR, is required when making an administrative decision to provide evidence that “it has adequately considered all relevant factors, and has demonstrated a rational connection between those factors, the choice made, and the purposes of the enabling statute.” *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California*, 162 Cal. App. 4th 534, 547-548 (2008) (internal quotations omitted). Or, as another court has stated, “A court must ensure that an agency has adequately considered all relevant factors, and has demonstrated a rational connection between those factors, the choice made, and the purposes of the enabling statute.” *California Hotel & Motel Assn. v. Industrial Welfare Com.*, 25 Cal.3d 200, 212 (1979). Here, the recommendation to deny approval of the Gateway Region merely states that Gateway Authority’s application is not “compelling.” Nowhere do the Guidelines require that an application be “compelling.”

DWR is required to set forth reasons supporting its decision concerning our application so that Gateway Authority and a reviewing court can evaluate whether the action was legally supportable. Without any such information, an action to deny Gateway’s request would be arbitrary, capricious and subject to legal challenge.

Summary

The Gateway Authority’s application to form its own Region should be approved. The Gateway Region satisfies all of the criteria for forming a Region. The GLAC does not represent the cities in the Gateway Region and approval of the GLAC Region should not include the Gateway Region.

Staff’s recommendation to deny Gateway Authority’s application was not supported by any evidence upon which the basis for the recommendation can be evaluated. Therefore, acceptance of that recommendation would be arbitrary, capricious and unlawful.

The primary purpose of regional water planning is to ensure that water projects are considered, approved and implemented on a regional basis. Past history shows that denial of Gateway Authority’s application will have the opposite effect. Needy projects

Mr. Lester Snow
September 22, 2009
Page 6

in Southeast Los Angeles County will not be approved and funding and planning will be spent in other areas of the County.

As shown in the Gateway Authority's application, the Gateway Region is a very large and diverse area and encompasses nearly all of the Central Groundwater Basin. The Gateway Authority has shown true regional collaboration, has addressed the needs of disadvantaged communities, has the authority and ability to develop a comprehensive IRWMP and is committed to ensuring that financing is expended on the most important projects, not merely in the jurisdictions of the larger, more powerful and possibly more affluent, member agencies.

We request that you approve formation of the Gateway Region.

Very truly yours,



Steven L. Dorsey
General Counsel, Gateway IRWM

cc: Kevin Wattier, Chair, Gateway Authority
Members of Board of Directors, Gateway Authority
Annette Hubbell, Executive Officer, Gateway Authority