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**DEPARTMENT OF JUSTICE**



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May 28, 2020

*Via E-mail Only*

Mr. J. Tom Boer  
Hunton Andrews Kurth LLP  
50 California Street, Suite 1700  
San Francisco, CA 94111

RE: City & County of San Francisco v. S.F. Bay Regional Water Quality Control Board  
Superior Court of California, County of Alameda, Case No. RG19042575

Dear Tom:

Thank you for your letter of May 26, 2020, responding to my April 21, 2020 letter regarding preparation of the administrative record for this matter. You acknowledged your responsibility to pay for the record, but asked for more information about what would be included in the record. I am glad to finally hear your concerns and I look forward to moving this case along.

As I explained on April 21, we have preliminarily identified approximately 7,000 pages of hard copy documents, 13 gigabytes of electronic documents, and 4,000 emails that could be part of the administrative record for this case. These are all the documents in the possession of the Regional Water Quality Control Board related to San Francisco's operations since at least the permit reissuance application was received in 2013.

The cost of the record, and the time to prepare the record, is largely driven by the necessary staff time needed to: organize and scan the 7,000 pages of hard copy documents; review all of the documents for attorney-client privilege, attorney work product privilege, and any other applicable privilege; organize them electronically; and index them. As I said in my April 21 letter, our estimate is approximately 233 hours of staff and paralegal time to complete the record, and each of these four tasks is estimated at between 40 and 60 hours. As you know, a review for privilege will be quite extensive, given the ongoing confidential enforcement discussions that you also are involved in. We are not in a position to have staff stop all of their other work and turn exclusively to preparing this record, so this will take some time. Also, we are trying to be realistic about the delays that will occur since staff are still sheltering at home

MR. J. TOM BOER

May 28, 2020

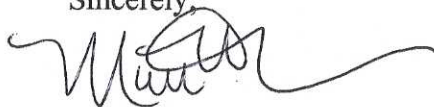
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due to the Covid-19 pandemic. Let me reiterate that this is an estimate. It may be that the process takes less time, but we wanted to give you and the Court a conservative and reliable estimate.

Your letter makes reference to the U.S. Environmental Protection Agency's record for your appeal to the Environmental Appeals Board ("EAB") regarding this permit. As you know, we are not involved in that appeal. However, based on my experience, records in California state court cases handled by my office are generally more comprehensive than records in federal review cases. I am confident that our record would be much more extensive than the EAB record. My understanding is that the EAB record does not include a great number of documents in our possession, including earlier documents in the permit reissuance process, internal agency emails, and monitoring and compliance documents submitted to the Regional Water Quality Control Board. It is also true that the EAB record includes some documents that would not be in our record, as they are post-decisional. Our attempt will be to provide the Court with a complete record for the decision being challenged.

Please feel free to contact me if you have further questions. Thank you for your courtesy and cooperation.

Sincerely,

A handwritten signature in black ink, appearing to read "Melnick", with a long horizontal flourish extending to the right.

MARC N. MELNICK  
Deputy Attorney General

For XAVIER BECERRA  
Attorney General

cc: Michael Montgomery, RWQCB  
Daniel S. Harris, DAG  
Samuel L. Brown

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