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JUL 30 2020

F I L E D

YUBA COUNTY SUPERIOR COURT
BONNIE SLOAN
SUPERIOR COURT CLERK

BY *[Signature]*
COURT CLERK

SUPERIOR COURT OF CALIFORNIA, COUNTY OF YUBA

GRETCHEN FLOHR,

Plaintiff,

vs

**THE NORTH YUBA WATER DISTRICT, and
DOES 1 through 100, Inclusive,**

Defendants

AND RELATED CROSS ACTION

Case No CV PT 19-0000503

STATEMENT OF DECISION

The court has reviewed the parties' respective filings after the court's tentative decision filed July 16, 2020. The court was required to issue a tentative decision. Cal Rules of Court, rule 3 1590(a). The "trial" in this matter occurred on July 13, 2020. A statement of decision is required only if a request is made before submission in such a case. Code Civ Proc section 632. Petitioner asked for a statement of decision before submission but did not specify the controverted issues as required. Code Civ Proc section 632. In spite of these deficiencies, the court issued a tentative decision pursuant to Cal Rules of Court, rule 3 1590(c)(4) inviting either party to "specify controverted issues" or "make proposals." The court has considered Respondent's submissions in this regard, rejects them and issues the following as its statement of decision.

Petitioner's writ petition is not specific as to what documents were requested as public records. Petitioner's opening brief includes three different request documents from petitioner to the district. The latest of these requests dated March 12, 2019 asks for "all drafts,

1 preliminary and final engineering plans (if any) for piping and/or all repairs for the Forbestown
2 ditch ” There is ambiguity in this request to the extent it is not clear whether this is a request
3 for “maintenance” records on the ditch or simply plans regarding repairs to the ditch
4 Regardless, the district understood this as a request for “all records related to all repairs” on
5 the ditch and asked that the time frame be specified The earliest request dated
6 December 7, 2018 also asked for “all draft and final CEQA documents” relative to the ditch
7 The final request did not repeat a request for CEQA documents and there appears to be no
8 response to that request A request by Petitioner’s attorney, Nassie dated February 25, 2019
9 asks for Engineering plans, nothing about repair records or CEQA documents A further
10 request by Petitioner dated March 29, 2019 asks for draft plans only, yet a response from the
11 district dated April 8, 2019 acknowledges that the repairs records request is still open

12 The District asserts that Gov Code section 6254(a) exempts the draft plans as
13 “preliminary drafts, notes or interagency or intra-agency memoranda ” The exemption does
14 not apply Engineering plans, at whatever stage of their evolution, do not constitute
15 “ written discourse concerning matters pending administrative action ”
16 *Citizens for a Better Environment v Department of Food and Agriculture* (1985) 171 Cal App
17 3d 704, 712 The plans constitute factual, not deliberative material and are, thus, not exempt
18 from disclosure

19 The next issue is whether the District has any draft plans A letter dated
20 March 11, 2019 from the District manager, Maupin to attorney, Nassie admits that “ the
21 District has the draft records responsive to your request ” As to the issue whether the
22 District has a right to the draft plans, both parties have provided a copy of the contract
23 between the District and the engineering firm, Northstar It provides in pertinent part at
24 Part 7, “All plans created by Contractor and provided to District shall be the property
25 of the District ” The District has the right to “use,” “publish,” “distribute” and “reproduce”
26 them Since the District owns “all plans,” they have the right to control and request them
27 from the contractor if they don’t currently have them in their possession (See discussion in
28 *Anderson-Barker v Superior Court* (2019) 31 Cal App 5th 528) All plans, whether draft or

1 final, do not lose their character as public records simply because they may have been
2 returned by the District to the contractor or sent to some other entity Records owned by the
3 District, wherever they are, continue to be public records Accordingly, they are ordered to
4 be produced

5 As to "repair records for the ditch," the District does not object to their production,
6 only that unless a specific time frame is specified, the request is "unreasonable and
7 burdensome" The issue is "whether the records can be located with reasonable effort"
8 *State Board of Equalization v Superior Court* (1992) 10 Cal App 4th 1177, 1186
9 Apparently, the ditch has been around a long time, but the District took over maintenance
10 only in the last 10 years Petitioner declares she has been advised that the records exist
11 The objection is not that the records cannot be located with reasonable effort The demand
12 to specify a time frame as a condition for producing these public records is not well-taken
13 Accordingly, they are ordered to be produced

14 As to the request for "CEQA documents" concerning the ditch, no response was ever
15 given by the District to this request Clearly, the main focus of this litigation has been plans
16 and maintenance records, but the court cannot say that this request was ever abandoned It is
17 probably common knowledge that this ditch piping project is subject to CEQA and the court
18 would assume, generally, that "CEQA documents" concerning the project exist The court
19 would also generally assume that a contractor was retained by the District to prepare such a
20 report with supporting documents The fact that the District never objected to this request and,
21 apparently, never responded to it and that the request appears not to have been abandoned
22 as reflected in Petitioner's brief, makes these records subject to disclosure Accordingly, they
23 are ordered to be produced

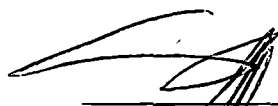
24 Petitioner's peremptory writ is GRANTED and the District is ORDERED to produce to
25 Petitioner the records identified above forthwith

26 Petitioner's claims/causes of action for injunctive and/or declaratory relief are
27 DISMISSED as moot

28 //

1 Judgment on Respondent's "cross-complaint" is for Petitioner and "cross-complainant"
2 shall take nothing

3 DATED July 30, 2020



4
5 STEPHEN W BERRIER
6 JUDGE OF THE SUPERIOR COURT
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PROOF OF SERVICE BY MAIL

I, the undersigned, hereby declare that I am a citizen of the United States, over the age of eighteen years, and not a party to the within action I am employed at Yuba County Superior Court and my business address is 215 Fifth Street, Marysville, California

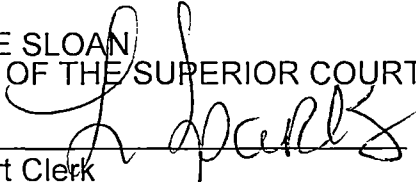
On July 30, 2020, I served the within STATEMENT OF DECISION on the named parties by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the central depository for mail collection for Yuba County, located at 215 Fifth Street, Marysville, California, addressed as follows

PAUL NICHOLAS BOYLAN
ATTORNEY AT LAW
PO BOX 719
DAVIS CA 95617

J SCOTT MILLER
LIAH M BURNLEY
CHURCHWELL WHITE LLP
1414 K ST 3RD FL
SACRAMENTO CA 95814

I declare under penalty of perjury that the foregoing is true and correct

Executed on July 30, 2020, at Marysville, California

BONNIE SLOAN
CLERK OF THE SUPERIOR COURT
By 
Court Clerk

1 Paul Nicholas Boylan SBN 140098
2 PAUL NICHOLAS BOYLAN, ESQ.
3 POB 719
4 Davis CA 95617
5 Telephone: 530 400 1653
6 Facsimile: 877 400 1693
7 Email: pnboylan@gmail.com

8 Attorneys for GRETCHEN FLOHR

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **COUNTY OF SACRAMENTO**

11 GRETCHEN FLOHR

12 Petitioner

13 v.

14 NORTH YUBA COUNTY WATER
15 DISTRICT

16 Respondent

Case No. CVPT19-00503

**NOTICE OF MOTION AND
MOTION FOR ATTORNEY FEES;
DECLARATION OF PAUL
NICHOLAS BOYLAN;
DECLARATION OF GRETCHEN
FLOHR**

NOTICE OF MOTION AND MOTION

TO THE NORTH YUBA WATER AGENCY AND ITS ATTORNEYS OF RECORD:

You are hereby notified that on September 28, 2020, at 10:00 AM in a Department 4 of the Yuba County Superior Court, located at 215 Fifth Street, Marysville, CA, Petitioner GRETCHEN FLOHR will move and hereby does move for an order awarding Petitioner her attorney’s fees on the grounds that Petitioner is the prevailing party and is entitled to a mandatory fee award per Government Code § 6269(d).

This motion will be supported by this notice of motion and motion and points and authorities, declarations and other documents that will be filed in support of this motion, the information contained in the court’s files and upon any oral or documentary argument or testimony presented at the hearing.

Date: August 31, 2020

PAUL NICHOLAS BOYLAN, ESQ.



Paul Nicholas Boylan, Attorney for
Petitioner GRETCHEN FLOHR

MEMORANDUM OF POINTS AND AUTHORIES

INTRODUCTION

Petitioner is an elected member of Respondent NORTH YUBA WATER DISTRICT. Her fellow district directors froze her out and denied her, and the public, access to and copies of records pertaining to the Forbestown Ditch Pipeline Project, prompting her to litigate to enforce her right and the public’s right to access the records Respondent is withholding.

This court issued its final judgment entitled “statement of decision” granting Petitioner’s petition, ordering Respondent to produce the records at issue, and dismissing Respondent’s cross-complaint in Petitioner’s favor. As the prevailing party, Petitioner now moved for an order awarding her attorney’s fees.

ARGUMENT

A. THE COURT’S JUDGMENT IS FINAL AND UNAPPEALABLE.

The Court’s July 30th statement of decision was a final judgment in this case because, regardless of its title, it was clearly intended to be a final determination of the dispute between the parties. (Code of Civil Procedure § 577 [“A judgment is the final determination of the rights of the parties in an action or proceeding”]; *Melbostad v. Fisher* (2008) 165 Cal.App.4th 987, 995 [“An “order” which is the final determination in the action is the judgment”]; (*Griset v. Fair Political Practices Com.* (2001) 25 Cal.4th 688, 698 [it is not the form of the decree but its substance and effect that determines whether an adjudication is final and appealable].”

Also, on July 30th, the court clerk served a file-stamped copy of the final judgment on Respondents via mail, leaving Respondents until August 24th to appeal via a petition for extraordinary relief.¹ That time has expired, rendering the statement of decision unappealable and settling Petitioner’s status as the prevailing party.

B. PETITIONER IS ENTITLED TO HER ATTORNEY FEES.

The court shall award court costs and reasonable attorney’s fees to the requester should the requester prevail in litigation filed to enforce the CPRA. (Government Code §

¹ Government Code § 6259(c) provides the only mechanism to contest a ruling in a CPRA enforcement action:

“Upon entry of any order pursuant to this section, a party shall, in order to obtain review of the order, file a petition within 20 days after service upon the party of a written notice of entry of the order, or within such further time not exceeding an additional 20 days as the trial court may for good cause allow. If the notice is served by mail, the period within which to file the petition shall be increased by 5 days.”

When, as here, a trial court serves a copy of a file-stamped copy of a judgment to a party, it serves as “written notice of entry” of the judgment. (*Eldridge v. Superior Court* (1989) 208 Cal.App.3d 1350, 1352-1355 [a file-stamped copy of an order mailed by a court clerk is notice of entry of that order].)

1 6259(d.) The Court awarded Petitioner all of the relief she requested and dismissed
2 Respondent’s cross-complaint in a judgment that cannot now be appealed. There can be
3 no question that Petitioner has prevailed in this litigation.

4 **C. THE “LODESTAR” BASE FEE CALCULATION.**

5 In setting a fee award this Court must first calculate the ‘lodestar’ amount, which is
6 “the number of hours reasonably expended multiplied by a reasonable hourly rate.”
7 (*Bernardi v. County of Monterey* (2008) 167 Cal.App.4th 1379, 1393-1394; *Ketchum v.*
8 *Moses* (2001) 24 Cal.4th 1122, 1131; *PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th
9 1084, 1095; *Meister v. Regents of University of California* (1998) 67 Cal.App.4th 437,
10 448–449.)

11 **1. The Number of Hours Claimed Are Reasonable.**

12 Petitioner’s counsel, Paul Nicholas Boylan (“Mr. Boylan”) carefully reviewed his
13 hours and removed from his total all time for work that was duplicative and/or
14 unnecessary to achieve favorable results for his client. (Boylan Decl., ¶¶ 11 and 12.)
15 119.2 hours spent representing his client and obtaining a non-appealable judgment in her
16 favor is more than reasonable. (Boylan Decl., ¶¶ 11 and 12.)

17 **2. The Hourly Rate Claimed is Reasonable.**

18 Mr. Boylan billed his time for services in this case at \$550 per hour. (Boylan
19 Decl., ¶ 13.) For lodestar calculation purposes, a reasonable hourly rate is the rate
20 charged by attorneys with the same experience and training in the legal market for the
21 same kind of work. (*Bernardi v. County of Monterey, supra*, 167 Cal.App.4th at p. 1394;
22 *PLCM Group, Inc. v. Drexler* (2000) 22 C4th 1084, 1095; *see also, Blum v. Stenson*
23 (1984) 465 U.S. 886, 895.)

24 Mr. Boylan is a local attorney who regularly practices law in Yuba County and is
25 likely among the most experienced local attorney representing non-governmental clients
26 on a contingency basis in actions to enforce the public records act. (Boylan Decl., ¶¶ 2-
27 10.) Consequently, Mr. Boylan’s hourly rate *is* the local rate charged by attorneys equally
28 experienced for the kind of contingency work Mr. Boylan performed in this case.

1 In the alternative, Mr. Boylan’s hourly rate is justified as “out-of-town” counsel
2 rates for purposes of calculating the lodestar fee award. Petitioner made a good faith
3 effort to retain more local counsel, but was unable to do so; more local counsel was either
4 unavailable or it was impracticable to retain them. (See Declaration of Gretchen Flohr,
5 below (“Flohr Decl.”), ¶¶ 8 through 10.) Under these circumstances, it is an abuse of
6 discretion to use a lower, local rate, in instead of out-of-town counsel’s hourly rate to
7 calculate a lodestar fee award. (*Horsford v. Board of Trustees of California State*
8 *University* (2005) 132 Cal.App.4th 359, 399; *Center For Biological Diversity v. County of*
9 *San Bernardino* (2010) 188 Cal.App.4th 603, 619.)

10 **B. “FEES ON FEES.”**

11 In addition to recovering fees incurred prosecuting the action, a successful party is
12 entitled to fees incurred moving for fees and costs – commonly referred to as “fees on
13 fees.” (*Serrano v. Priest* (1982) 32 Cal.3d 621, 639.) As shown in Mr. Boylan’s
14 itemized bill, attached hereto as Exhibit 1, Mr. Boylan worked a total of 18.9 hours
15 preparing Petitioner’s fee motion. He is entitled to \$10,395 (18.9 hours x \$550 per hour)
16 to compensate him for these “fees on fees.”

17 **D. A MULTIPLIER SHOULD APPLY.**

18 After determining the lodestar fee award, the court determines whether a
19 “multiplier” should adjust the lodestar. (*Bernardi v. County of Monterey, supra*, 167
20 Cal.App.4th at 1399; *Serrano v. Priest* (“*Serrano III*”) (1977) 20 Cal.App.3d 25, 48;
21 *Serrano v. Unruh* (1982) 32 Cal.3d 621, 639; *Meister v. Regents of Univ. of Calif.* (1998)
22 67 CA4th 437, 446–447.)

23 The purpose of a multiplier is to provide a premium to encourage attorneys to take
24 cases enforcing public rights. (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1138.) This
25 premium is determined by multiplying the base fee by any factor the court decides is
26 warranted. (See *Beasley v. Wells Fargo Bank* (1991) 235 Cal.App.3d 1407, 1419
27 [upholding trial court multiplying the base fee award by 1.5]; see also, *Chavez v. Netflix*,

28

1 *Inc.* (2008) 162 Cal.App.4th 43, 66 [recognizing that “multipliers can range from 2 to 4 or
2 even higher”].)

3 Mr. Boylan agreed to prosecute this case on behalf of Dr. Flohr on a contingency
4 basis. (Flohr Decl., ¶ 10.) Contingency risk is the most common factor applied to justify a
5 multiplier. (*Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553, 579.) As stated in
6 *Bernardi v. County of Monterey* (2008) 167 Cal.App.4th 1379:

7 “The adjustment to the lodestar figure to provide a fee enhancement
8 reflecting the risk that the attorney will not receive payment if the suit does
9 not succeed, constitutes earned compensation; unlike a windfall, it is neither
10 unexpected nor fortuitous. Rather, it is intended to approximate market-level
11 compensation for such services, which typically includes a premium for the
12 risk of nonpayment or delay in payment of attorney fees.... In cases
13 involving the enforcement of constitutional or statutory rights, such fee
14 enhancements may make such cases economically feasible to competent
15 private attorneys.”

14 (*Id.* at 1399.) This describes Mr. Boylan’s circumstance exactly. This is a contingency
15 case taken to enforce important public rights. Absent a multiplier, Mr. Boylan will not be
16 fully compensated for his work defending and enforcing fundamental public rights.

17 In *Ketchum v. Moses*, the Supreme Court further explained the economic rationale
18 and the policy necessity for fee enhancement in contingency cases:

19 “A contingent fee must be higher than a fee for the same legal services paid
20 as they are performed. The contingent fee compensates the lawyer not only
21 for the legal services he renders but also for the loan of those services. The
22 implicit interest rate on such a loan is higher because the risk of default (the
23 loss of the case, which cancels the debt of the client to the lawyer) is much
24 higher than that of conventional loans. [Citation.] A lawyer who both bears
25 the risk of not being paid and provides legal services is not receiving the fair
26 market value of his work if he is paid only for the second of these functions.
27 If he is paid no more, competent counsel will be reluctant to accept fee award
28 cases. [Citations.]”

(*Ketchum v. Moses, supra*, 24 Cal.4th at pp. 1132-1133.)

1 A preclusion of other employment justifies a multiplier. (*Ketchum v. Moses, supra*,
2 24 Cal.4th at pp. 1132.) The time Mr. Boylan devoted to this case precluded him from
3 other, non-contingent employment. (Boylan Decl., ¶ 13.)

4 Novel or difficult issues also justify a multiplier (*Ketchum v. Moses, supra*, 24
5 Cal.4th at pp. 1132.) This case bristled with novel and difficult issues – from the unique
6 defense tactic of filing a cross-complaint prematurely accusing a person seeking to access
7 public records of prosecuting a frivolous claim, to Respondents attempt to avoid
8 producing CEQA records by arguing the District doesn't own or use CEQA documents
9 being filed on Respondent's behalf,² to Respondent's attempt to obtain a statement of
10 decision despite waiving an appeal.

11 Finally, a difficult, overly aggressive opponent and resulting procedural demands
12 are factors justifying a multiplier. (*Warren v. Kia Motors America, Inc.* (2018) 30
13 Cal.App.5th 24, 41.) Mr. Boylan succeeded against a very difficult opponent utilizing
14 "scorched earth" tactics that needlessly complicated his prosecution of this action, forcing
15 him to defend against premature and patently untrue accusations that Petitioner prosecuted
16 this action for frivolous reasons. (Boylan Decl., ¶¶ 14 through 17.)

17 A modest .5 multiplier is necessary to recognize Mr. Boylan's good work
18 successfully facing a difficult opponent financed with unlimited public money spent for
19 the purpose of subverting the public's fundamental right to access records and
20 information. (*See* Government Code § 6250.)

21 **CONCLUSION**

22 For all the reasons set forth above, Petitioner respectfully requests this Court award
23 Petitioner:

24 ■ Fees incurred to obtain result: \$65,560 (119.2 hours x \$550 per hour);

25 _____
26 ² Petitioner has recently learned that Respondent's contractor, Northstar, has been
27 filing documents with state agencies arguing that Respondent is not required to comply
28 with CEQA because the Forbestown Ditch Pipeline Project is exempt from CEQA
compliance. See Flohr Decl., ¶ 7.)

- 1 ■ Fees incurred preparing motion: \$10,395 (18.9 hours x \$550 per hour) ; and
- 2 ■ Multiplier: \$32,790 (\$65,560 x .5).

3 Petitioner's Reply Brief will include a revision of this total to include time spent
4 preparing Petitioner's Reply Brief and attending the hearing on this motion.

5 Date: August 31, 2020

PAUL NICHOLAS BOYLAN, ESQ.



6
7
8 Paul Nicholas Boylan, Attorney for
Petitioner GETCHEN FLOHR

9
10 ***DECLARATION OF PAUL NICHOLAS BOYLAN***

11 I, Paul Nicholas Boylan, declare:

12 1. I am the attorney of record for the Petitioner in this action. I am in good
13 standing and licensed to practice in all California courts. The matters stated below are true
14 and are made from my own personal knowledge. I could and would competently testify as
15 to the statements I make in this declaration if called upon to do so. I have provided expert
16 opinion related to attorney fee claims.

17 2. I have over 31 years of experience in media, First Amendment law and
18 records access litigation, writs and appeals. During law school, it was my great honor to
19 serve as an intern and extern clerk for the Honorable Raul A. Ramirez (U.S. District Court
20 for the Eastern District of California), an intern clerk for the Honorable J. Clinton
21 Peterson (Solano County) and a legal intern with the American Film Institute (Los
22 Angeles). I graduated in 1989 from the University of California, Davis, School of Law
23 and, other than serving as in-house General Counsel for the Fall River Joint Unified
24 School District, I have been in private practice ever since.

25 3. I began my law practice as an associate with the following Sacramento area
26 law firms: Dehart & Chafin (litigation); the Law Office of Jay-Allen Eisen (writs and
27 appeals); Hanson, Boyd, Culhane and Watson (litigation, writs and appeals); and Pinnell
28 & Kingsley (litigation, writs and appeals).

1 4. I opened my own legal office in 1997 with a focus on litigation, writs and
2 appeals, intellectual property, media, First Amendment, open government and records
3 access. My current news media clients include: the Sacramento Valley Mirror, the Davis
4 Vanguard, the Woodland Record, the Lake County News, the Rio Del Times, the Ferndale
5 Enterprise, the North Coast Journal, the Intercept, Mad River Union and Capitol and
6 Main, Los Coast Communications. I also represent investigative journalists Joe Rubin,
7 Matthew Drange and Daniel Webster.

8 5. Since 1997 I have also represented multiple public agencies as general and
9 special counsel (governance, statutory compliance, litigation) including approximately 34
10 school districts. I also represent – both as litigation and appellate counsel – private
11 citizens seeking access to government held records and information.

12 6. My published appellate opinions are: *The California Gun Rights*
13 *Foundation v. Superior Court* (2020) 49 Cal.App.5th 777; *Preven v. City of Los*
14 *Angeles* (2019) 32 Cal.App.5th 925; *City of Eureka v. Superior Court* (2016) 1 Cal. App.
15 5th 755; *Newark Unified School Dist. V. Superior Court* (2015) 245 Cal. App. 4th 887;
16 *Kyle v. Carmon* (1999) 71 Cal. App. 4th 901; *Valley Medical Transport, Inc. v. Apple*
17 *Valley Fire Protection Dist.* (1998) 17 Cal. 4th 747; *Obos v. Scripps Psychological Assocs.*
18 (1997) 59 Cal. App. 4th 103; *County of San Bernardino v. City of San Bernardino* (1996)
19 15 Cal. 4th 909; *Western/California, Ltd. V. Dry Creek Joint Elementary School Dist.*
20 (1996) 50 Cal. App. 4th 1461; *Brock v. First South Savings Assn.* (1992) 8 Cal. App. 4th
21 661; *Yu v. Alcoholic Bev. Etc. Appeals Bd.* (1992) 3 Cal. App. 4th 286; *Engelmann v. State*
22 *Bd. Of Education* (1991) 2 Cal. App. 4th 47; *Vukovich v. Radulovich* (1991) 235 Cal. App.
23 3d 281.

24 7. I am the recipient of the California News Publisher’s Association’s 2017
25 Freedom of Information Award recognizing my work in *City of Eureka v. Superior Court*
26 (2016) 1 Cal. App. 5th 755 – a case where I was awarded fees that included a multiplier.

27 8. I have represented or am representing the following open
28 government/records access public advocacy entities as trial and/or appellate counsel:

1 AquAlliance, Californians Aware, the California Gun Rights Foundation, Community
2 Venture Partners, Eye on Sacramento, the First Amendment Coalition, and New Livable
3 California. Throughout my professional career I have advised public agencies, elected
4 officials and public employees on their duties and obligations pertaining to records access
5 issues.

6 9. I have served as an adjunct professor of law for the University of the
7 Pacific, McGeorge Law School (Sacramento) (topic: transnational media negotiations)
8 and as an annual invited professor of law at the University of Poitiers School of Law
9 (Poitiers, France) (topic: transnational media negotiations). I am often invited to
10 speak/give papers at colleges and universities, including but not limited to the University
11 of Queensland School of Journalism (Brisbane, Australia) (topic: the California Public
12 Records Act); University of Johannesburg (Johannesburg, South Africa) (topic: celebrity
13 confidentiality/nondisclosure agreements); Trinity College (Dublin, Ireland) (topic:
14 copyright); Stanford University (topic: records access law). I have been part of speaker
15 panels for workshops/seminars that offer MCLE credit hosted by the University of Central
16 Lancashire (Preston, England) (topic: negotiations) and Law Seminars International
17 (topic: the California Public Records Act).

18 10. I regularly work with other California Attorneys throughout California
19 who have a similar background and experience in records access litigation and appellate
20 work that my practice emphasizes. Ours is a cooperative effort and shared passion. I
21 regularly advise private clients in Yuba County on records access law. I am aware of no
22 attorney who practices before this Court who has the background, experience and
23 combined practice areas that I do and who provide similar or the same records access
24 focused litigation and appellate services. I know of no more “local” attorneys that
25 represent petitioners in records access litigation on a contingency basis as I do.

26 11. Attached hereto as Exhibit 1 is a true copy of my bill for the work I did in
27 this case as of the filing of this motion. I made efforts to assure that all of the hourly time
28 I am claiming reflects work that was reasonable and necessary to successfully obtain the

1 results achieved. As part of my preparation for drafting this fee motion I carefully
2 reviewed my bill to assure accuracy and to eliminate any time spent that was duplicative
3 or that was not necessary to prosecute this action.

4 12. I made all time entries shown in Exhibit 1 contemporaneously with the work
5 described. The number of hours I am claiming are less than other records access cases I
6 have successfully litigated, including the time spent moving for fees and costs. I am
7 aware that attorneys who offer legal services comparable to the legal services I provided
8 in this case habitually bill far more hours, charge more per hour than I do, and that they do
9 not take cases on a contingency basis.

10 13. Petitioner requests a lodestar multiplier upward adjustment to any fee
11 award. I agreed to represent Petitioner on a contingent basis, billing my time at my
12 customary non contingent rate of \$550 per hour for records access litigation. This was an
13 unusually difficult case, requiring extensive investigation to demonstrate that
14 Respondent's records production was incomplete – not once, but twice. More time was
15 required to review the thousands of pages of records produced after this lawsuit was filed,
16 with extra care and effort required because of Respondent's history of assurances that all
17 records were produced – assurances that turned out to be untrue. This case involved novel
18 if not unique issues – still unsettled – pertaining to the limits of discovery in CPRA
19 enforcement cases. The time I devoted to this contingency case prevented me from doing
20 other hourly work for other clients.

21 14. In my legal career I have faced off against dozens of large law firms
22 representing public agencies seeking to withhold public records that deployed what is
23 commonly referred to as a “scorched earth” defense strategy designed to inflict time, cost
24 and emotional burdens on a petitioner's counsel and their client – all done to “wear down”
25 the petitioner's will to enforce their rights to access public records and information.

26 15. In my opinion, Respondent's attorneys employed a scorched earth strategy
27 in this case forcing me to actively litigate every stage of the proceedings in order to
28 protect my clients' claim – including but not limited to prosecuting an unnecessary cross-

1 complaint for attorney’s fees through a premature accusation that Dr. Flohr was pursuing
2 her patently meritorious claims for frivolous reasons. There was and is simply no need for
3 a cross-complaint of this nature; Government Code § 6269 provides the opportunity for a
4 prevailing respondent to move for fees and costs after the case is decided on its merits. I
5 have spent my legal career prosecuting and defending against CPRA enforcement actions,
6 and not once did I ever encounter – or even hear about from other attorneys who
7 specialize in this kind of work – a respondent agency cross-complaining using the
8 allegation of a frivolous petitioner as a weapon during litigation. As this Court noted in
9 the Court’s ruling on Respondent’s motion to compel, the cross-complaint was “wagging
10 the dog” with the argument that Petitioner is frivolous reserved for the end of the case, not
11 the beginning.

12 16. Respondent’s determination to vigorously prosecute its clearly punitive
13 cross-complaint created delay and procedural hurdles (a threatened demurrer that did not
14 materialize; discovery that is rare in records access litigation: many hours of needless,
15 fruitless depositions humiliating to my client and a motion to compel that, unopposed,
16 proceeded to hearing anyway in an attempt of imposing sanctions). Immediately after the
17 hearing on Respondent’s motion to compel, Respondent’s counsel was suddenly receptive
18 to setting a hearing on the matter as soon as possible and completing discovery.

19 17. Finally, Respondent’s weird attempt to obtain a formal Statement of
20 Decision when Respondent waived the request by failing to timely make a request – and
21 Respondents waiver of an appeal by failing to file and serve a petition within the deadline
22 Government Code § 6259 mandates - is further evidence of a scorched earth defense
23 strategy designed to burden the prosecution of what is intended and statutorily designed to
24 be a fast, inexpensive proceeding.

25 18. I declare under penalty of perjury under the laws of California that the
26 foregoing is true and correct, and that this declaration was executed on August 31, 2020,
27 in Davis, California.



Paul Nicholas Boylan

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DECLARATION OF GRETCHEN FLOHR

I, Gretchen Flohr, declare:

1. I am the Petitioner in this action. I make this declaration from my own knowledge. I could and would competently testify as to the statements I make in this declaration if called upon to do so.

2. My educational background is: Ph.D. Herpetology, Southern Illinois University-Carbondale, Carbondale, Illinois, 2009; B.S. and M.S. Organismal and Conservation Biology, San Jose State University, San Jose, California, 1996; 1999 respectively.

3. My Employment background is: Principal Scientist, Surf to Snow Environmental Resource Management 2018-Present; President and Owner, Senior Wildlife Biologist, Californian Environmental Services, LLC, 2011-2018; Associate Senior Wildlife Biologist, Live Oak Associates, 2000-2010; Wildlife Biologist, H.T. Harvey & Associates, 1995-1999.

4. On November 6, 2018, I was elected to a four-year term as the NYWD Director for Division 4. I was elected in large measure with the promise that I would provide the public with information about the Forbestown Ditch Pipeline Project that has been and continues to be pursued in virtual secrecy.

5. I filed this lawsuit because my fellow board members and the District administration froze me out, refusing to answer my questions and provide me – or the public - with records and information I need to perform my duties as an elected official representing residents, water customers and taxpayers of the North Yuba Water District. This Board Majority continues their scheme of keeping me and the public in the dark about their spending and their plans for committing enormous resource to the Forbestown Ditch Pipeline Project – a plan that, if effectuated, appears to cut the District’s water supply, which cuts off water to District customers, especially agricultural water customers. At our last board meeting, the Board Majority authorized \$40,000 to pay July’s

1 legal bills. I asked who is being paid this money, and my question was ignored. After
2 that, I was placed on mute so that I could not participate in the meeting – despite my
3 protests during a moment when my mute was lifted and I protested being placed on mute.

4 6. I am deeply grateful for the court’s judgment granting my petition to enforce
5 my rights, and the public’s rights, to access records that will shed light on the pipeline
6 project. We have waited a very long time to find out what is going on. As I mentioned, I
7 was elected in large part to find out, and I feel that I have, at last, fulfilled the promises I
8 made to do so.

9 7. Throughout my term of office, I asked for access to and copies of CEQA
10 documents, and each time I was told that they were not available, but I was assured that I
11 would get copies of them when they were complete. I never did. I’ve heard recently that
12 Northstar, the District’s contractor, has been filing documents on Respondent’s behalf
13 arguing that the pipeline project is CEQA exempt – yet I – an elected District Director -
14 have never seen these documents despite repeatedly asking to see them - and I am aware
15 of no agenda item or Board action to discuss or consider CEQA compliance. Respondent
16 ignored and continues to ignore every question, every records requests about the pipeline
17 project. The court’s judgment in this case is the only progress we’ve made, and the only
18 chance we have to learn what is being kept secret, away from public scrutiny. I only hope
19 that there is still time to review everything to learn more about the project. Whether what
20 we learn is good or bad, whether we learn about decisions, water and money transfers
21 were right or wrong, the public has the right to know how their business is being
22 conducted, especially one as important as the pipeline project, which is of vital and
23 pressing public interest and concern.

24 8. Despite my efforts to retain more local counsel, I am aware of no counsel
25 more local than Mr. Boylan who would have represented me in this action. Yuba County
26 is a small county. My fellow directors and the District administration have made my
27 status as a *persona non grata* board member well known, and I believe that it is part of the
28 reason why it was so difficult for me to hire an attorney to help me access the records and

1 information Respondent is denying me. I talked with approximately 15 to 20 local
2 attorneys. None of them were willing to represent me against NYWD. Many refused to
3 even talk to me. Those who did talk to me, clearly did not have experience litigating
4 records access disputes. Of the few who might have been willing to listen to me, none of
5 them were willing to represent me on a contingency basis, and I just could not afford to
6 retain an attorney on an hourly basis to represent me in a CPRA enforcement action. None
7 of the many Yuba County located attorneys who I spoke with could or would recommend
8 an attorney they thought could or would represent me.

9 9. I almost gave up. But a friend of mine recommended I look outside of the
10 County for an attorney. Very quickly I learned about Mr. Boylan. I researched his
11 background and saw that he has the experience necessary to successfully prosecute a
12 records access lawsuit against a well-financed public agency that is trying to operate in
13 secret – as he demonstrated in this case. He even succeeded against a non-public agency
14 – a County Fair Association – by enforcing the lease the Association had with Humboldt
15 County, with the public as a third party beneficiary to that lease, to obtain public access to
16 the Association’s financial records.

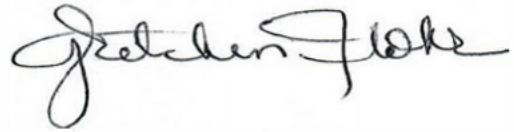
17 10. I contacted Mr. Boylan. He asked some questions. I sent him a copy of my
18 ignored records requests. He called me back and said he would represent me and would
19 take my case on a contingency basis, keeping track of his time billed at \$550 per hour and
20 \$650 for any appellate work that might come up. I retained Mr. Boylan to represent me
21 per the foregoing terms. I was so relieved.

22 11. I feel I chose wisely. This was not an easy case to win. Respondent tried to
23 intimidate me into dropping the case, cross-complaining against me, alleging that my
24 claims were frivolous, and threatening that, if I lost, I would have to pay Respondent’s
25 defense fees and costs. They deposed me for hours, and it was often humiliating for me as
26 they implied I am dishonest and was pursuing my claims because I was an old, vindictive
27 woman. Even though Mr. Boylan reassured me that the odds were very, very small that I
28 would be ordered to pay the District’s defense fees and costs, I worried about it a lot. I

1 still find myself worrying about it, even though I know I've won, and Mr. Boylan now
2 assures me that there cannot be an appeal because Respondents missed the deadline to file
3 a petition to challenge the Court's judgment in my favor.

4 12. I hope the Court awards Mr. Boylan his fees. He earned it the hard way
5 against a very difficult opponent represented by a big, unreasonably aggressive law firm
6 representing a client that was and remains hell-bent on operating in secret – or delaying
7 public review of their secret activities - despite the law that requires Respondent's
8 transparency.

9 I declare under penalty of perjury that the foregoing is true and that this
10 Declaration was executed on August 31, 2020, in Oregon House, California.

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14 Gretchen Flohr
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