

JUL 16 2020

F I L E D

YUBA COUNTY SUPERIOR COURT
BONNIE SLOAN
SUPERIOR COURT CLERK

BY K. Rice
COURT CLERK

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SUPERIOR COURT OF CALIFORNIA, COUNTY OF YUBA

GRETCHEN FLOHR,
Plaintiff,

vs.

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

Case No. CV PT 19-0000503

TENTATIVE DECISION

AND RELATED CROSS ACTION.

Petitioner's writ of mandate and Respondent's cross-complaint came on for hearing July 13, 2020, before the undersigned.

The following will become the Court's Statement of Decision unless, within 10 days after service of the Tentative Decision, a party specifies those principal controverted issues as to which the party is requesting a Statement of Decision or makes proposals not included in the Tentative 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, preliminary and final engineering plans (if any) for piping and/or all repairs for the Forbestown ditch." There is ambiguity in this request to the extent it is not clear whether this is a request for "maintenance" records on the ditch or simply plans regarding repairs to the ditch. Regardless, the District understood this as a request for "all records related to all repairs" on

1 the ditch and asked that the time frame be specified. The earliest request dated
2 December 7, 2018, also asked for "all draft and final CEQA documents" relative to the ditch.
3 The final request did not repeat a request for CEQA documents and there appears to be no
4 response to that request. A request by Petitioner's attorney, Nassie, dated February 25, 2019,
5 asks for Engineering plans, nothing about repair records or CEQA documents. A further
6 request by Petitioner dated March 29, 2019, asks for draft plans only, yet a response from the
7 District dated April 8, 2019, acknowledges that the repairs records request is still open.

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

14 The next issue is whether the District has any draft plans. A letter dated March 11, 2019,
15 from the District Manager Maupin to Attorney Nassie admits that "...the District has the draft
16 records responsive to your request..." As to the issue whether the District has a right to the
17 draft plans, both parties have provided a copy of the contract between the District and the
18 engineering firm, Northstar. It provides in pertinent part at Part 7, "All ...plans...created by
19 Contractor...and provided to District...shall be the property of the District..." The District has
20 the right to "use," "publish," "distribute," and "reproduce" them. Since the District owns "all
21 plans," they have the right to control and request them from the contractor if they don't
22 currently have them in their possession. (See discussion in *Anderson-Barker v. Superior Court*
23 (2019) 31 Cal.App.5th 528.) All plans, whether draft or final, do not lose their character as
24 public records simply because they may have been returned by the District to the contractor or
25 sent to some other entity. Records owned by the District, wherever they are, continue to be
26 public records. Accordingly, they are ordered to be produced.

27 As to "repair records for the ditch," the District does not object to their production, only
28 that unless a specific time frame is specified, the request is "unreasonable and burdensome."

1 The issue is "whether the records can be located with reasonable effort." *State Board of*
2 *Equalization v. Superior Court* (1992) 10 Cal.App.4th 1177, 1186. Apparently, the ditch has
3 been around a long time, but the District took over maintenance only in the last ten years.
4 Petitioner declares she has been advised that the records exist. The objection is not that the
5 records cannot be located with reasonable effort. The demand to specify a time frame as a
6 condition for producing these public records is not well-taken. Accordingly, they are ordered to
7 be produced.

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

18 Petitioner's peremptory writ is **granted** and the District is **ordered** to produce to
19 Petitioner the records identified above forthwith.

20 Petitioner's claims/causes of action for injunctive and/or declaratory relief are
21 **dismissed** as moot.

22 Judgment on Respondent's "cross-complaint" is for Petitioner and "cross-complainant"
23 shall take nothing.

24 DATED: July 16, 2020

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27 _____
28 STEPHEN W. BERRIER
JUDGE OF THE SUPERIOR COURT

1 PROOF OF SERVICE BY MAIL

2 I, the undersigned, hereby declare that I am a citizen of the United States, over the age
3 of eighteen years, and not a party to the within action. I am employed at Yuba County
4 Superior Court and my business address is 215 5th Street, Marysville, California.

5 On July 16, 2020, I served the within: TENTATIVE DECISION on the named parties by
6 placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid,
7 in the central depository for mail collection for Yuba County, located at 215 5th Street,
8 Marysville, California, addressed as follows:

9 PAUL NICHOLAS BOYLAN ESQ Counsel for plaintiff/cross-defendant
10 PO BOX 719
DAVIS CA 95617

11 BARBARA A BRENNER ESQ Counsel for defendant and cross-complainant
12 LIAH M BURNLEY ESQ
13 CHURCHWELL WHITE LLP
14 1414 K ST 3RD FL
SACRAMENTO CA 95814

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

15 Executed on July 16, 2020, at Marysville, California.

16 BONNIE SLOAN
17 CLERK OF THE SUPERIOR COURT

18 By: K. Rice
Court Clerk

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