

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO

FILED/ENDORSED
MAR 27 2026
 By: *D. Tran*

DATE/TIME	March 20, 2026, at 2:30 p.m.	DEPT. NO	12
JUDGE	HON. STEPHEN ACQUISTO	CLERK	D. TRAN
<p>TULARE LAKE BASIN WATER STORAGE DISTRICT,</p> <p style="text-align: center;">Petitioner,</p> <p style="text-align: center;">v.</p> <p>CALIFORNIA DEPARTMENT OF WATER RESOURCES,</p> <p style="text-align: center;">Respondent,</p> <hr style="border: 1px solid black;"/> <p style="text-align: center;">And Consolidated and Related Cases.</p>		<p>Case Nos. (Consolidated):</p> <p><u>24WM000006</u></p> <p>24WM000008</p> <p>24WM000009</p> <p>24WM000010</p> <p>24WM000011</p> <p>24WM000012</p> <p>24WM000014</p> <p>24WM000017</p> <p>24WM000062</p> <p>24WM000076</p> <p>Case Nos. (Related):</p> <p>25WM000030</p> <p>25WM000136</p>	
Nature of Proceedings:		Ruling on Submitted Matter – Respondent’s Motion to Disqualify Counsel	

On March 19, 2026, the Court issued a tentative ruling denying the motion to disqualify counsel filed by Respondent California Department of Water Resources. The next day, the Court held a hearing on the motion and took the matter under submission. Having considered the parties’ submissions and arguments at the hearing, the Court issues this final ruling denying the motion.

BACKGROUND

In 2019, the Department prepared a draft Initial Study and Mitigated Negative Declaration (“IS/MND”) under the California Environmental Quality Act (“CEQA”) regarding geotechnical investigations in the Sacramento-San Joaquin Delta that would inform and evaluate alternatives for a potential future single-tunnel water conveyance project to divert water from the

Sacramento River and the Delta as directed by the Governor’s Executive Order N-10-19.¹ The Department received a number of public comments raising legal arguments against the draft IS/MND, including that the proposed geotechnical work would cause significant environmental harm, that a full review through an environmental impact report (“EIR”) was required, and that review of the geotechnical work was improperly severed from review of the rest of the future water conveyance project in violation of CEQA’s prohibition against piecemealing.

Around March 2020, the Department consulted the law firm Remy Moose Manley LLP (“Remy Moose”) to help prepare responses to the public comments and revise the draft IS/MND. At Remy Moose, attorney Casey Shorrock, supervised by James Moose, was assigned this task. Shorrock worked with Moose and the Department’s staff to draft and revise the responses to public comments. The Department prepared and adopted the final IS/MND incorporating its responses to public comments. The Department also adopted an addendum to effectuate minor changes to the proposed geotechnical work.

In the following years, the potential future single-tunnel water conveyance system materialized and became known as the Delta Conveyance Project (“DCP”). On December 21, 2023, the Department approved the DCP and certified its EIR. Although the EIR mainly described the project as the “construction, operation, and maintenance” of the DCP, the EIR encompassed “additional geotechnical work that was similar in nature to the initial geotechnical work covered by the IS/MND and subsequent addenda.” (*Tulare Lake Basin Water Storage Dist. v. Department of Water Resources* (2025) 115 Cal.App.5th 342, 355.) Following the approval of the DCP, ten writ petitions challenging the approval under CEQA, the Water Code, and other laws were filed and eventually consolidated. A number of petitioners in this proceeding are represented by the law firm Somach Simmons & Dunn APC (“Somach”).²

Between December 2023 and January 2024, Shorrock left Remy Moose and joined Somach. At Somach, Shorrock has performed work on these consolidated cases related to the administrative record. Shorrock has also participated in an administrative proceeding before the

¹ The Department requests judicial notice of the draft IS/MND as well as other official records and court filings. The unopposed request is granted as to all items. (Evid. Code, § 452, subs. (c), (d).)

² The petitioners represented by Somach are City of Stockton in case 24WM000009, Sacramento Area Sewer District in case 24WM000012, County of Sacramento and Sacramento County Water Agency in case 24WM000014.

State Water Board regarding the Department's water rights as related to the DCP. In April 2025, after an attorney for the Department in the State Water Board proceeding recognized Shorrock from her time at Remy Moose, the Department and Somach began discussing but were unable to resolve their disagreement regarding the potential conflict posed by Shorrock's prior representation of the Department in connection with the IS/MND and her current representation of clients of Somach who oppose the DCP. In January 2026, the Department filed this motion to disqualify Somach on the ground that Shorrock's current representation in this proceeding is a violation of the California Rules of Professional Conduct, rule 1.9(a). Somach opposes the motion, and the petitioners who are represented by Somach join the opposition.

DISCUSSION

“A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed written consent.” (Cal. Rules Prof. Conduct, rule 1.9(a).) Under its inherent authority to control its proceedings (Code Civ. Proc., § 128, subd. (a)(5)), a court may disqualify counsel in violation of the rule against successive representation. (*Jessen v. Hartford Casualty Ins. Co.* (2003) 111 Cal.App.4th 698, 705.) “A motion to disqualify counsel brings the client's right to the attorney of his or her choice into conflict with the need to maintain ethical standards of professional responsibility....The paramount concern is the preservation of public trust in the scrupulous administration of justice and the integrity of the bar.” (*Ibid.*)

The key analysis is whether there was a “substantial relationship between the subjects of the prior and the current representations.” (*City and County of San Francisco v. Cobra Solutions, Inc.* (2006) 38 Cal.4th 839, 847 [internal quotation marks omitted].) Whether there was a “substantial relationship” “turns on two variables: (1) the relationship between the legal problem involved in the former representation and the legal problem involved in the current representation, and (2) the relationship between the attorney and the former client with respect to the legal problem involved in the former representation.” (*Jessen, supra*, 111 Cal.App.4th at p. 709.)

“[T]he trial court must first identify where the attorney's former representation placed the attorney with respect to the prior client.” (*Id.*, at p. 710.) If the relationship was “direct and personal” so that “the lawyer was personally involved in providing legal advice and services to

the former client,” then it is “conclusively presumed that the attorney acquired confidential information relevant to the current representation[.]” (*Id.*, at pp. 709, 711.) In such cases, the factor regarding the relationship between the attorney and the former client “is settled as a matter of law in favor of disqualification and the only remaining question is whether there is a connection between the two successive representations, a study that may not include an inquiry into the actual state of the lawyer’s knowledge acquired during the lawyer’s representation of the former client.” (*Id.*, at p. 711 [internal quotation marks omitted].) “However, if the court determines the former attorney was not placed in a direct, personal relationship with the former client, the court must assess whether the attorney was positioned during the first representation so as to make it likely the attorney acquired confidential information relevant to the current representation, given the similarities or lack of similarities between the two.” (*Ibid.*)

The requisite relationship between the legal problems involved in the past and current representations is established when the “subjects of the prior and the current representations are linked in some rational manner,” so that “information material to the evaluation, prosecution, settlement or accomplishment of the former representation given its factual and legal issues is also material to the evaluation, prosecution, settlement or accomplishment of the current representation given its factual and legal issues.” (*Id.*, at pp. 711, 713 [internal quotation marks omitted].) This test is broader than the “precise legal and factual issues” present in both cases. (*Id.*, at pp. 712-713 [citing cases finding substantial relationships between a prior employment matter and current unfair competition matter, and prior personal injury matter and current breach of contract matter].) However, there are limits—the mere fact that the prior and current representations involve the same type of legal claim is insufficient to establish a substantial relationship. (See *Khani v. Ford Motor Co.* (2013) 215 Cal.App.4th 916, 919-921 [no substantial relationship based on prior and current representations involving California Lemon Law claims against automaker].)

This two-part test governing disqualification is “anything but a ‘bright line’ standard,” and “must be applied to individual cases by the exercise of the court’s considered judgment based in reason, logic and common sense.” (*Jessen, supra*, 111 Cal.App.4th at p. 713.)

I. The Relationship Between Shorrock and the Department Was “Direct and Personal.”

The facts regarding the nature and extent of Shorrock’s prior representation of the Department in connection with the IS/MND appear to be mostly undisputed.

James Moose supervised Shorrock’s work at Remy Moose. (Moose Decl. ¶ 6.) Around March 2020, Shorrock was tasked with “making or recommending revisions to the [IS/MND]; revising the language of mitigation measures; helping to draft responses to public comments”; “providing input into a Power Point presentation to the Delta Conveyance Design and Construction Authority”; and providing analysis for the addendum to the IS/MND, which required her “to interface directly with DWR attorneys and other DWR staff.” (*Id.*, ¶¶ 7-9.)

Katherine Marquez was the Department’s lead staff member tasked with responding to public comments to the draft IS/MND. (Marquez Decl. ¶ 3.) Shorrock was tasked with reviewing and revising responses to the public comments that Marquez’s team had prepared, as well as drafting six master responses to the comments. (*Id.*, ¶¶ 5-6.) Marquez was in direct contact with Shorrock orally and by email, and Shorrock was exposed to “confidential information relating to [the Department]’s strategy in responding to” a number of arguments raised by public comments. (*Id.*, ¶ 8.)

Kenneth Bogdan was counsel for the Department. (Bogdan Decl. ¶ 5.) Bogdan “spoke with both Jim Moose and Casey [Shorrock] on the overall legal strategy related to the IS/MND and supporting the range of alternatives for the DCP EIR.” (*Id.* ¶ 8.) Bogdan also spoke with Shorrock regarding the Department’s “strategy for the geotechnical work described in the IS/MND and how DWR intended to respond to the public comments relating to the same in anticipation of legal challenges to the IS/MND and ultimately the DCP EIR.” (*Ibid.*)

Shorrock’s declaration regarding the nature and extent of her work at Remy Moose is mostly consistent with the declarations of Moose, Marquez, and Bogdan. (See Shorrock Decl. ¶ 3.) Shorrock denies, however, that she gave any “legal advice to [the Department] on the Delta Conveyance Project (DCP)[.]” (*Ibid.*) She also adds that the “majority of [her] communications with [the Department] occurred with [her] supervisor Mr. Moose present,” and any direct communications regarding suggested edits and revisions without her supervisor present were with a non-attorney staff member of the Department. (*Ibid.*)

Remy Moose's invoices to the Department are consistent with these declarations. (See Carroll Decl. ¶ 6, Exh. E.) They show that Shorrock indeed had direct contact with the Department's employees (see, e.g., *id.*, entries for 4/17/2020, 5/20/2020), but also that her work was supervised by Moose who provided significant direction (see, e.g., *id.*, entries for 4/21/2020, 5/20/2020). With respect to her work for the Department, Shorrock billed over 200 hours between April 2020 and January 2021, with most of the hours having been billed by June 2020. (*Ibid.*; Moose Decl. ¶ 8.)

The Court finds that Shorrock's relationship with the Department was "direct and personal" as provided in *Jessen*. Shorrock had direct contact with the Department's employees such as Marquez and Bogdan regarding the Department's handling of public comments to the IS/MND. To that extent, she was "personally involved in providing legal advice and services" under *Jessen*. While an attorney's level of responsibility could be relevant in determining whether he or she had a "direct and personal" client relationship, it has little bearing in a case such as this where the attorney was in direct communications with the client. (See *Victaulic Co. v. Am. Home Assurance Co.* (2022) 80 Cal.App.5th 485, 510-511 [no personal relationship where, "[t]o begin with, there was no evidence [of] any direct communication with any officer or employee".]) This appears to be a "classic attorney-client scenario" in which confidential information is likely to be passed on from the client to the attorney. (*Jessen, supra*, 111 Cal.App.4th at p. 710.)

II. The Subjects of the Two Representations Are Not Sufficiently Related.

The next issue is whether the subjects of the prior and current representations are sufficiently related such that information material to the prior representation is also material to the current representation. Here, although the subjects of the two representations share some similarities, their differences are significant enough that they are not substantially related.

The two representations are factually similar to the extent that they each involved a set of geotechnical investigations in the Delta. The IS/MND assessed geotechnical work in response to the Governor's executive order in 2019 introducing "a new approach to modernize Delta water conveyance, one which included the consideration of a new, single-tunnel project alternative[.]" (Butcher Decl., Exh. O, p. 1.) The EIR for the DCP being challenged in this case "included additional geotechnical work that was similar in nature to the initial geotechnical work covered by the IS/MND and subsequent addenda." (*Tulare Lake, supra*, 115 Cal.App.5th at p. 355.)

However, the geotechnical work covered in the IS/MND was an undertaking independent from any potential, future conveyance project. As the Department argued in a previous case challenging the IS/MND, the “geotechnical studies [in the IS/MND] and the potential, future DCP have different purposes, timelines, approvals, and implementation, allowing them to properly undergo separate environmental review.” (Taber Decl., ¶ 3, Exh. E, at p. 29:22-24.) Unlike the geotechnical work in the IS/MND, which preceded the DCP, the geotechnical work in this case is part of the EIR for the DCP and was needed for finalizing planning and design of the DCP as fully reviewed in the EIR. The fact that the respective sets of geotechnical work in the IS/MND and the EIR were undertaken as independent projects with distinct purposes is an indication that any information gained in the prior representation is not material here.

Also, the fact that the earlier geotechnical work was reviewed through an IS/MND and the later geotechnical work was reviewed through an EIR is a significant distinction. An agency’s decision to issue a negative declaration following an initial study presents a different procedural posture and standard of review than does an agency’s decision supported by an EIR. (See *Joshua Tree Downtown Business Alliance v. County of San Bernardino* (2016) 1 Cal.App.5th 677, 684 [explaining CEQA’s “three-tiered process” and the fair argument standard of review for negative declarations]; *Mira Mar Mobile Community v. City of Oceanside* (2004) 119 Cal.App.4th 477, 486 [explaining standard of review for EIRs].) Defending an IS/MND in support of a *potential future* conveyance project against legal arguments raised in public comments would not require the same level of substantiation as defending the sufficiency of an EIR for the DCP in CEQA litigation.

The Department cites to similarities between discrete legal issues raised in the prior and current representations, but overall, they appear to be less than significant. The Department points out that certain commenters on the IS/MND argued that the Department improperly piecemealed geotechnical review from the potential future DCP for CEQA purposes, and that the petitioners represented by Somach raised similar arguments in their motions for preliminary injunction. But the primary issue in the motions for preliminary injunction was not whether the geotechnical work was piecemealed in violation of CEQA (in fact, the later geotechnical work *was* included in the EIR as a part of the project), but whether the Delta Reform Act incorporated CEQA’s prohibition on piecemealing. (See *Tulare Lake*, *supra*, 115 Cal.App.5th at p. 348.)

Next, the Department contends that certain commenters on the IS/MND raised issues of negative environmental effects of geotechnical work in the Delta and inconsistency with the Delta Reform Act, and that the petitioners represented by Somach raised similar arguments in their petitions and motions for preliminary injunction. But again, these similarities appear minor and incidental especially given the difference in their respective contexts of defending an IS/MND against public comments and seeking judicial relief in CEQA litigation challenging an EIR.

Lastly, the Department argues the “purpose of the IS/MND was to gather geotechnical information about the soils in the Delta in order to identify a reasonable range of alternatives for the development of the DCP EIR,” and the petitions filed by Somach raise the same issue by challenging the Department’s consideration of alternatives in the EIR. (Mot., p. 12:16-20.) This argument, which is based on the general “purpose of the IS/MND” to identify a reasonable range alternatives, is a stretch, given Shorrock’s limited role in preparing responses to public comments to the IS/MND and given the aforementioned differences between challenging an IS/MND and challenging an EIR.

In light of these legal and factual differences, the Court does not find that the subjects of the prior and current representations are sufficiently related for purposes of this motion. There is not a sufficient showing that information material to the prior representation would also be material to the current representation.

CONCLUSION

For these reasons, the motion is denied.

* * *

This order is effective immediately. No formal order or other notice is required. (Code Civ. Proc., § 1019.5; Cal. Rules of Court, rule 3.1312.)