

## Farwell Jensen, Jane

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**From:** Tauriainen, Andrew@Waterboards  
**Sent:** Thursday, September 24, 2015 4:08 PM  
**To:** Unit, Wr\_Hearing@Waterboards  
**Cc:** Dan Kelly (dkelly@somachlaw.com); Jeanne Zolezzi; 'jonathan.knapp@sfgov.org'; 'Jennifer Spaletta' (jennifer@spalettalaw.com); ngmplcs@pacbell.net; "Dante Nomellini, Jr." (dantejr@pacbell.net); McGinnis, Robin C.@DWR; 'rjmorat@gmail.com'; Valerie Kincaid; Herrick, John @aol.com; 'smorris@swc.org'; Mrowka, Kathy@Waterboards  
**Subject:** BBID ACLC Hearing  
**Attachments:** BBID ACLC Pre-Hearing Response.pdf  
**Importance:** High

Hearing Team:

Attached please find a late-filed pre-hearing conference statement from West Side Irrigation District. The Prosecution Team objects to any late-filed statements. The statement deadline was September 23 at noon.

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State Water Resources Control Board  
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**Subject:**  
**Importance:** High

Please see attached. Thank you.

*Jeanne M. Zolezzi*

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September 22, 2015

VIA ELECTRONIC MAIL

Ms. Tam M. Doduc  
Hearing Officer  
State Water Resources Control Board  
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Sacramento, CA 95814-0100  
[Tam.Doduc@waterboards.ca.gov](mailto:Tam.Doduc@waterboards.ca.gov)

Re: Pre-Hearing Conference in the Matter of Alleged Unauthorized Diversion by Byron-Bethany Irrigation District

Dear Ms. Doduc:

As a party to the above hearing I feel compelled to respond on behalf of The West Side Irrigation District (“**WSID**”) to the Pre-Hearing Conference Statement Submitted by the Attorney for the Prosecution Team dated September 23, 2014.

1. Complexity of the Issues. Mr. Tauriainen states that we “overstate the complexity of the issues and the need for discovery.” This assertion stems from the Prosecution Team’s continued belief that because the State Water Resources Control Board (“**State Water Board**”) has made a determination of the availability of water, there should be no need for dispute as to the validity of that conclusion, illustrated by the following statement:

. . .the Division’s water availability determinations a straightforward process comparing water supply and demand data taken from publicly available sources. The Division has applied the same process since 2014, and water availability determinations and supporting technical data are available to the public via the State Water Board’s website. Extensive discovery would not provide any benefit or clarity.

While the water supply and demand data are available on the State Water Board’s website, that information addresses only the data that the State Water Board staff utilized in its water determination. It does not cover (1) the accuracy of that data, (2) data that was not included in the calculation, and (3) determinations of why some data was included and other data was not. All of these issues must be addressed through discovery.

2. Need for Discovery. Mr. Tauriainen indicates that because the Prosecution Team will “submit witness statements and evidence,” “discovery is unnecessary.” Such a statement is illogical, submission of witness statements and evidence are a required precursor to discovery. The importance of discovery is only highlighted by the Prosecution Team’s dogged insistence that presentation times at the hearing itself be strictly limited.

3. Joint Discovery. Mr. Tauriainen states that because there are common issues between the BBID ACLC and the WSID CDO proceedings, that the hearing officer should “put WSID and aligned parties on notice that WSID and any party to the WSID proceeding should conduct discovery in the BBID proceeding on matters common to both proceedings, and that the Hearing Officer may decline to allow discovery in the WSID proceeding that could have been conducted in the BBID proceeding”. Such a limitation is draconian, and would infringe upon WSID’s due process rights. In addition, such a requirement would infringe upon BBID’s right to defend itself in the manner it determines to be appropriate.
4. Aligned Parties. Mr. Tauriainen observes that “there are a number of parties whose interests appear to be aligned in these proceedings,” and then attempts to lump at least seven parties together and ask that they be “limited to the coordinated cumulative time limits set forth in the Hearing Notice. . . .” Mr. Tauriainen is not privy to the interests of CDWA, SDWA, WSID, Banta-Carbona Irrigation District, Patterson Irrigation District, the San Joaquin Tributaries Authority and City and County of San Francisco, and has no idea whether or not the interests of these parties are aligned. Limiting the time of individual parties based upon the Prosecution Team’s presumption that their interests are aligned would also violate due process. Certainly the Hearing Officer can direct each party when testimony is repetitive; but prospectively limiting time is unwarranted.
5. Rebuttal Evidence. Mr. Tauriainen requests that the hearing Office “expressly prohibit the parties from presenting rebuttal evidence that they should have presented during their cases-in-chief.” This is difficult to comprehend. On the one hand, Mr. Tauriainen is asking to limit each party’s case in chief time, while on the other hand he appears to ask that each party anticipate what issues the Prosecution Team will raise and include all potential rebuttal evidence in its case-in-chief. The Prosecution Team cannot have it both ways.
6. Testimony Time. Despite the Prosecution Team’s assertions to the contrary, the issues involved in this hearing are complex, and the parties numerous. The hearing raises serious issues of property rights and due process. The State Water Board’s decision will certainly be appealed to the Superior Court. For all these reasons, no party should be stripped of its right to present its complete case in a time efficient manner. Restricting a party’s time arbitrarily for no valid reason would interfere with due process protections, and should not be tolerated.
7. Public Records Act Request. The State Water Board appears to be acting in bad faith in responding to the Public Records Act requests. With regard to West Side, its initial PRA request was made on July 31, 2015, nearly two months ago, and no documents have yet been provided. The last correspondence from the State Water Board was an email dated August 10, 2015, in which promises were made that an initial disclosure of documents would be available “within the next two to three weeks.” That time has come and gone without additional response.

Very truly yours,



JEANNE M. ZOLEZZI  
Attorney-at-Law

**SERVICE LIST OF PARTICIPANTS  
 BYRON-BETHANY IRRIGATION DISTRICT  
 ADMINISTRATIVE CIVIL LIABILITY HEARING  
 (09/02/15; Revised: 09/11/15)**

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