

**EXHIBIT 75**

1 KAMALA D. HARRIS  
Attorney General of California  
2 GAVIN G. MCCABE  
Supervising Deputy Attorney General  
3 MATTHEW G. BULLOCK, SBN 243377  
CLIFFORD T. LEE, SBN 74687  
4 Deputy Attorneys General  
455 Golden Gate Avenue, Suite 11000  
5 San Francisco, CA 94102-7004  
Telephone: (415) 703-1678  
6 Fax: (415) 703-5480  
E-mail: Matthew.Bullock@doj.ca.gov  
7 Attorneys for Respondent and Defendants State  
Water Resources Control Board, et al.

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF  
9 SAN JOAQUIN

12 BANTA-CARBONA IRRIGATION  
DISTRICT,

13 Petitioner/Plaintiff

14 vs,

15 CALIFORNIA STATE WATER  
16 RESOURCES CONTROL BOARD;  
THOMAS HOWARD, EXECUTIVE  
17 DIRECTOR OF THE CALIFORNIA STATE  
WATER RESOURCES CONTROL BOARD

18 Respondents/Defendants  
19  
20  
21

Case No. 39-2015-00326421-CU-WM-WTK

**Declaration of John O'Hagan in  
Opposition to Petitioner/Plaintiff's  
Application for Stay and/or in the  
Alternative Temporary Restraining Order  
and/or Preliminary Injunction**

Hearing Date: June 23, 2015

Time: 9:15 a.m.

Dept: 41

Judge: The Honorable Carter P. Holly

Trial Date: TBA

Action Filed: June 18, 2015

By Fax

1 I, John O'Hagan, declare:

2 1. I have been an employee of the State Water Resources Control Board (State Water  
3 Board) for the past 34 years, and I am currently employed by the Board. Since May 2003 I have  
4 overseen the Enforcement Section of the State Water Board's Division of Water Rights  
5 (Division). Since April 2014, I have been the Division's Assistant Deputy Director overseeing the  
6 Enforcement Section and the Permitting and Licensing Section. As Assistant Deputy Director, I  
7 supervise the State Water Board's analyses for determining if water supplies are sufficient to  
8 meet current water use demands in critical watersheds during the 2014 and 2015 drought. I am  
9 responsible to meet with stakeholders of the watershed and ensure our information is transparent  
10 and I provide monthly updates to the Board at its monthly Board Meetings. I have a 1980  
11 Bachelor of Science Degree in Civil Engineering from California State University at Sacramento,  
12 and I have been registered as a Professional Civil Engineer in California since 1984.

13  
14  
15 2. As part of my responsibility for overseeing the Enforcement Section, I am  
16 responsible for the work of the Enforcement Section that includes, but is not limited to, statewide  
17 compliance and complaint investigations of water diversion projects and initiating formal  
18 enforcement actions. Part of these activities is monitoring diversions to ensure compliance with  
19 the state's water rights priority system. These activities include monitoring for the purpose of  
20 determining whether any diversion and use of water is authorized under the Water Code.

21  
22 3. The State Water Board has been vested by the Legislature with the authority to  
23 prevent unauthorized diversions and supervise the water right priority system. (See, e.g. Wat.  
24 Code §§ 174, 186, 1050, 1051, 1051.5, 1052, 1825.)

25 4. The water right priority system provides the primary basis for determining which  
26 users may divert, and how much, when there is insufficient water in the stream for all users.  
27 Riparian right holders generally have the most senior priority to natural flows in a stream, and

1 older, more senior appropriative water rights have priority over more junior appropriative water  
2 rights. Senior water right holders are more likely to receive water at times of shortage than more  
3 junior water right holders. However, once water is stored or imported from another watershed,  
4 the entity that stored or imported the water has the paramount right to that water. Other  
5 appropriative water rights holders may divert any abandoned return flows. Riparian water right  
6 holders are only entitled to divert natural flow, so are not entitled to divert releases, or the return  
7 flows from upstream releases of stored water.  
8

9         5. When the amount of water available in a surface water source is not sufficient to  
10 support the needs of existing water right holders, the more junior right holders must cease  
11 diversion in favor of more senior right holders. However, it is not always clear to a junior  
12 diverter whether there is sufficient flow in the system to support their diversion and at the same  
13 time support senior water uses downstream. It can also be difficult to determine whether releases  
14 of stored water are abandoned flows that may be diverted or whether those flows are not available  
15 for diversion because they are being released for downstream purposes. Similarly, it can be  
16 difficult for a riparian to know if water is natural flow, or stored or imported water and whether  
17 and when and to what extent correlative reductions in water use are needed due to the need to  
18 share limited supplies amongst riparians. In accordance with the State's water right priority  
19 system, the State Water Board notifies diverters of the need to curtail water diversions when  
20 sufficient flows in a watershed are not available for a water user's needs, based on their priority  
21 of right.  
22

23  
24         6. A curtailment notice is a notification to water right holders of a certain priority of  
25 right that, due to water shortage conditions, the State Water Board has determined water is not  
26 available under their priority of right. A notice of curtailment is not an enforceable decision or  
27 order of the State Water Board. The notice provides the affected water right holder with the State  
28

1 Water Board's findings of the unavailability of water under their priority of right for a certain  
2 right and the need to cease diversion under that right, the exceptions to the notice for direct  
3 diversion of water for power, and for continued use of previously stored water, and the potential  
4 for future enforcement for unauthorized diversions. A curtailment notice does not consider any  
5 particular diverter's other senior water rights or other facts such as water supply contracts,  
6 agreements, transfers or groundwater supplies that may allow the diverter to continue to divert  
7 lawfully. The notice is therefore not a State Water Board determination that any individual  
8 diverter is taking water without authorization under the Water Code. A diverter who continues to  
9 divert after receiving a notice of curtailment is not subject to penalties for violation of the  
10 curtailment notice, but may be subject to enforcement for an unauthorized diversion if their  
11 diversions do not fall within the exceptions enunciated in the notice and are not entirely  
12 authorized by other, non-curtailed water rights.  
13  
14

15 7. I have reviewed the Notice of Unavailability of Water and Need for Immediate  
16 Curtailment dated June 12, 2016 and addressed to Patterson Irrigation District and attached as  
17 Exhibit A to the petitioner's petition for writ of mandate. This notice is the type of curtailment  
18 notice that I described in paragraph 6. This notice does not constitute a decision or order of the  
19 State Water Board or a determination that Patterson Irrigation District, petitioner, or any other  
20 individual diverter has engaged in an unauthorized diversion of water under the Water Code.  
21

22 8. Diversion of water when it is unavailable under a diverter's priority of right  
23 constitutes an unauthorized diversion and a trespass against the state. The State Water Board may  
24 subject such unauthorized diversions to an Administrative Civil Liability (ACL) of up to \$1,000  
25 per day and \$2,500 per acre-foot of water unlawfully diverted in a drought year, or refer a diverter  
26 to the Attorney General's office for enforcement. The State Water Board may also issue  
27 administrative cease and desist orders and request court injunctions to require that diversions  
28

1 stop.

2 9. Before issuing such an order, the State Water Board must have particularized  
3 information regarding an unlawful diversion or the potential of such a diversion: the Board may  
4 not issue an enforceable order requiring diversion to cease simply based on lack of water  
5 availability, absent information that there is a risk of or actual continued diversion. Additionally,  
6 before issuing a final enforcement order, the State Water Board must first issue a draft Cease and  
7 Desist Order or an ACL Complaint. If such enforcement action is proposed, a water right holder  
8 is entitled to, upon written request within 20 day of receipt of the draft enforcement action, an  
9 evidentiary hearing on all issues before the order takes effect.  
10

11 10. The general analysis for determining the necessity for curtailment of water rights  
12 in any watershed compares the current and projected available water supply with the total water  
13 right diversion demand. For the water availability determination of the curtailment analysis, the  
14 State Water Board relies upon the full natural flows of watersheds calculated by the Department  
15 of Water Resources (DWR) for certain watersheds in its Bulletin 120, and in subsequent monthly  
16 updates. "Unimpaired Runoff" or "Full Natural Flow" represents the natural water production of  
17 a river basin, unaltered by upstream diversions, storage, or by export or import of water to or  
18 from other watersheds. The full natural flow amount is different than the measured stream flows  
19 at the given measurement points because the gauged flows are increased or decreased to account  
20 for these upstream operations. Forecasted flow data is uncertain so DWR provides the data in the  
21 form of "levels of exceedance" or simply "exceedance" to show the statistical probability that the  
22 forecasted supply will occur. The exceedance is simply the percent of the time that the actual  
23 flow is expected to exceed the projected flow. The 90 percent exceedance hydrology assumes  
24 inflows from rainfall and snowmelt at levels that are likely to be met or exceeded by actual flows  
25 with a 90 percent probability, or in other words, there is a ten percent or less chance of actual  
26  
27  
28

1 conditions turning out to be this dry or drier. The 50 percent exceedance is the 50/50 forecast.

2 The State Water Board uses both exceedances for its analyses.

3 11. Specifically, for the San Joaquin River watershed, the State Water Board totaled  
4 DWR's full natural flows for the Stanislaus, Tuolumne, Merced, Upper San Joaquin, Cosumnes  
5 and Mokelumne rivers on a monthly basis as the monthly available water supply for the San  
6 Joaquin River watershed. State Water Board staff also increased these total full natural flow.  
7 amounts by adding monthly quantities for smaller watersheds and estimated return flows based on  
8 the DWR's May, 2007 Report of Unimpaired Flow Data. Estimates in the report for 1977 were  
9 used for these adjustments. The monthly adjusted water supply is provided in acre-feet per month  
10 and the State Water Board converts these amount into average monthly cubic feet per second for  
11 graphic purposes (at two exceedance levels). The State Water Board also shows DWR's daily  
12 full natural flow calculations on the graph for consideration before any curtailment. DWR's daily  
13 full natural flow calculations are less accurate because they are based on less data than is  
14 available at the completion of each month. Due to the lag between the effect of upstream  
15 operations and downstream flow measurements, calculated daily FNF will fluctuate from day to  
16 day. State Water Board staff also checks available forecast information from the California-  
17 Nevada River Forecast Center, real time flow conditions from the DWR and United States  
18 Geological Survey. This real time information and forecasted precipitation events can delay the  
19 curtailment notice.  
20  
21

22  
23 12. For water right demands, the State Water Board relies on information supplied by  
24 water right holders on annual or triennial reports of water diversion and use required to be true  
25 and accurate to the best of the knowledge of the diverters. The State Water Board also received  
26 2014 diversions data from water right holders that represents 90 percent of the water diverted  
27 from April through September in the Delta, and 90 percent of the water diverted from the upper  
28

1 Sacramento and San Joaquin Rivers. This information was required pursuant to Order WR 2015-  
2 0002 dated February 4, 2015. All reported monthly water diversion data is compiled by  
3 watershed, type of right and priority dates. The State Water Board performs quality control  
4 checks and removes obvious errors, excess reporting, removes demand for direct diversion for  
5 power, and makes additional changes based on stakeholders comments. The corrected demand  
6 data includes the 2014 reported data for 90% of the watershed demand plus for the remaining  
7 diverters, an averaged diversion amount for 2010 through 2013. These monthly diversion  
8 demands are grouped into water right types (riparian, pre-1914 and post-1914 rights) and by  
9 priority dates for pre-1914 and post-1914 rights. For the Sacramento-San Joaquin River  
10 Watersheds, special consideration of the Delta diversions is made. To be most conservative for  
11 the San Joaquin River, the State Water Board performs a proportional analysis based on the  
12 inflows from the watersheds. For example, for the month of June, the proportional full natural  
13 flow of the San Joaquin River watershed based on 90% exceedance, was 17 percent. Therefore,  
14 the San Joaquin watershed Delta demand was 17 percent of the total Delta demand.  
15

16  
17 13. The State Water Board provides graphical summations of these priorities with  
18 monthly demands for the total riparian demand at bottom, the pre-1914 demands added to riparian  
19 and depicted above the riparian demand. The monthly amounts are averaged into cubic feet per  
20 second for graphical purposes.  
21

22 14. The State Water Board is consistently making adjustments to its analyses based on  
23 new information obtained from stakeholders, or adjustments to projected flows from the DWR.  
24 State Water Board staff reviews this information and provides revisions to its data set and graphs  
25 that are all shown on the Drought Website.

26 15. The goal of curtailments is principally to ensure that water to which senior water  
27 right holders are entitled is actually available to them. To ensure that this occurs generally  
28



1 requires that some water remain in most streams to satisfy senior demands at the furthest  
2 downstream point of diversion of these senior water rights.

3 16. Attached as Exhibit B is a water supply and demand chart prepared by the State  
4 Water Board and issued on June 11, 2015 entitled "2015 San Joaquin River Basin Senior  
5 Supply/Demand Analysis with Proportion Delta Demand." The bar graph data discloses in terms  
6 of cubic feet per second the anticipated demand for water by riparian and pre-1914 water users  
7 for the period of March through September, 2015. The variable solid blue line displays the daily  
8 full natural flow from March 1, 2015 through June 7, 2015 of the San Joaquin River basin. The  
9 declining dotted lines represent the forecasted full natural flow through September, 2015 for the  
10 adjusted 50% and 90% exceedance levels. Based upon the data and information from which  
11 Exhibit B was derived and other relevant data, the State Water Board concluded that there is  
12 insufficient water in the San Joaquin River basin to satisfy water right claimants with priorities of  
13 1903 or later.  
14

15  
16 17. On January 17 and April 2, 2014, the State Water Board issued a Notice of Surface  
17 Water Shortage and Potential for Curtailment of Water Right Diversions. The notice advised that  
18 if dry weather conditions persist, the State Water Board will notify water right holders of the  
19 requirement to limit or stop diversions of water under their water rights, based on water right  
20 priority.  
21

22 18. In April, the State Water Board began issuing drought-related curtailment notices  
23 to water right holders in a number of water-short watersheds.

24 The following notices of curtailment have been mailed to water right holders:

25 April 3, 2015- Antelope Creek Fishery Protection Regulation

26 April 17, 2015- Deer Creek Fishery Protection Regulation

27 April 23, 2015- Post-1914 and Surplus Class Rights in Scott River  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

April 23, 2015- All post-1914 rights in the San Joaquin River Watershed.

April 30, 2015- all Permits and Licenses subject to Term 91 in Sacramento-San Joaquin watersheds and Delta.

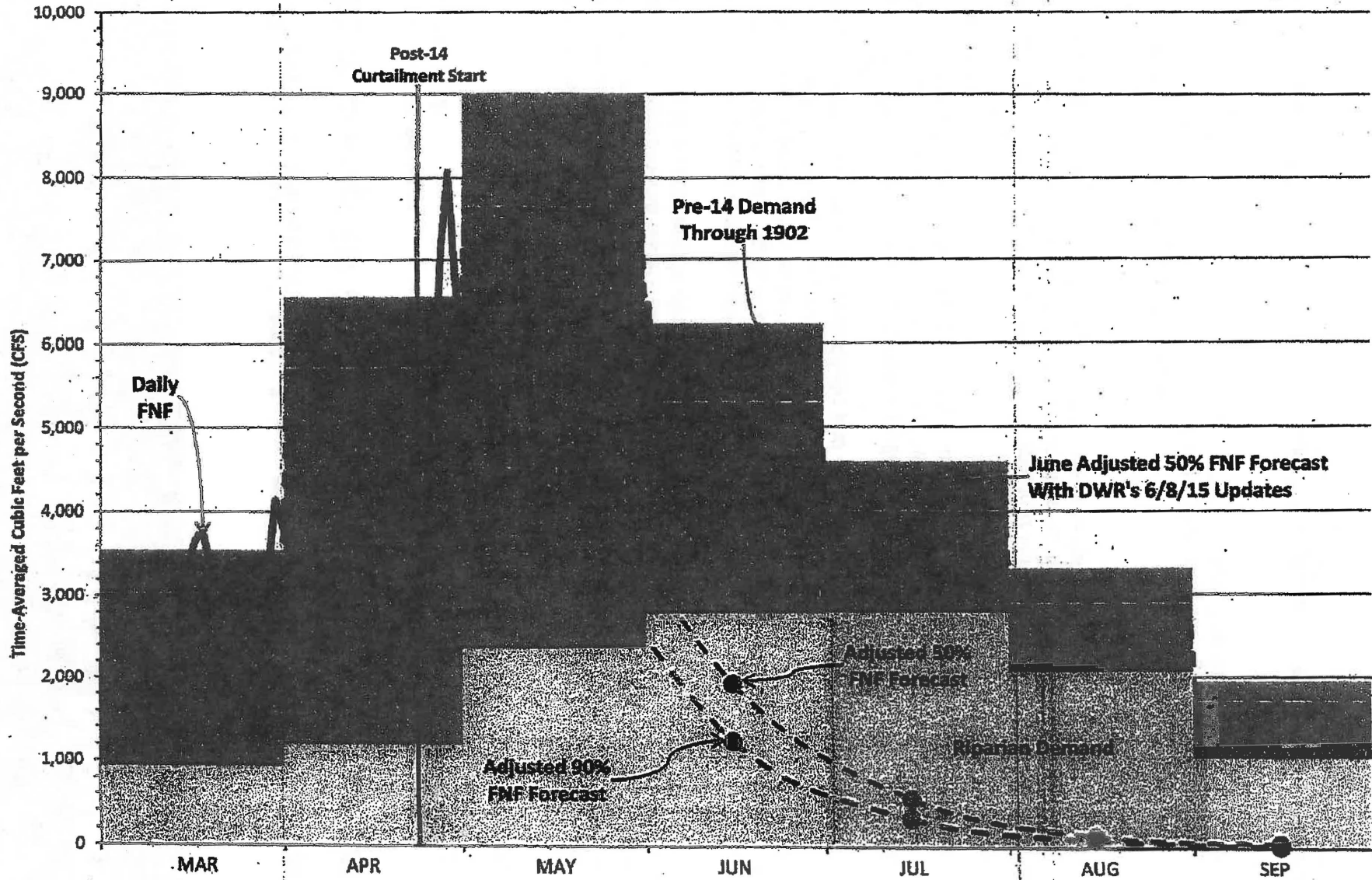
May 1, 2015- All post-1914 rights in Sacramento River Watershed and Delta

June 12, 2015- Pre-1914 rights with a priority dated of 2003 or later in the Sacramento-San Joaquin watershed and Delta.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct to the best of my knowledge. Executed this 22 day of June, 2015 in Sacramento, California

  
JOHN O'HAGAN

## 2015 San Joaquin River Basin Senior Supply/Demand Analysis With Proportional Delta Demand



See following page for additional information.

EXHIBIT 1

6/11/2015



# Water Rights News

## Senior Water Rights Curtailed in Delta, San Joaquin & Sacramento Watersheds

For Immediate Release  
June 12, 2015

Contact: Tim Moran  
[Timothy.Moran@waterboards.ca.gov](mailto:Timothy.Moran@waterboards.ca.gov)  
George Kostyrko  
[George.Kostyrko@waterboards.ca.gov](mailto:George.Kostyrko@waterboards.ca.gov)

**SACRAMENTO** – With drought conditions continuing into the summer months, the State Water Resources Control Board (State Water Board) announced today that there is insufficient water available for senior water right holders with a priority date of 1903 or later in the San Joaquin and Sacramento watersheds and the Delta. The need for further curtailment of more senior rights and curtailments in other watersheds is being assessed weekly.

Notices are being sent to water right holders that direct recipients to stop diversions of water to protect more senior water rights and releases of previously stored water, as required by state law. Diversion of water when water is not available under the right holder's date of priority is unauthorized and unlawful. Violations are subject to fines up to \$1,000 per day and \$2,500 per acre-foot of water unlawfully diverted, cease and desist orders, or prosecution in court.

Senior water right holders with priority dates earlier than 1903 in the affected watersheds can continue to divert water in accordance with their water right. In addition, those who have previously stored water under a valid right may continue to hold that water or release it for beneficial use.

While this is the first time during the current drought that senior water right holders have been given notice that water is not available to serve their water right priority, it is not unprecedented. Some senior water right holders were curtailed during the drought of the late 1970s.

### **Water Rights Affected by This Notice**

Today's curtailment notices affect 276 pre-1914 appropriative water rights held by 114 right holders. Today's notices do not affect any riparian right holders. The water rights affected include:



CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY  
STATE WATER RESOURCES CONTROL BOARD  
1001 I Street, Sacramento, CA 95814 • Mailing Address: P.O. Box 100, Sacramento, CA 95812-0100 • [www.waterboards.ca.gov](http://www.waterboards.ca.gov)



- On the Sacramento River, 127 water rights with a priority date of 1903 or later are curtailed, affecting water rights held by 86 right holders.
- On the San Joaquin River, 24 water rights with a priority date of 1903 or later are curtailed, affecting water rights held by 14 right holders.
- In the Delta, 125 water rights with a priority date of 1903 or later are curtailed, affecting water rights held by 14 right holders.

### **Uses To be Curtailed**

The following uses are listed for the pre-1914 water rights affected by today's notices:

- 135 water rights held by 53 right holders for irrigation, stockwatering, and/or livestock as the sole water use; and
- 208 water rights held by 80 right holders for irrigation, stockwatering, or livestock as at least one of the claimed water uses.

Today's action is based on reported diversion demands, estimates of natural flows and actual stream flows. Conditions in these and other watersheds continue to be monitored, and curtailment notices for other watersheds and for more senior water right holders in these watersheds may be imminent.

Some water right holders may have other, more senior rights to fall back on, or have water stored in reservoirs that they can still access. If that's not available they will have to find other sources of water, such as groundwater or purchased water, if available. Water right holders are cautioned that groundwater resources are significantly depleted in some areas.

### **Background**

California water rights law is based on seniority. In dry years, when there isn't enough water in the system to serve all water right holders, those with more junior rights are required to stop diverting water from rivers and streams before restrictions are imposed on more senior right holders. The Water Commission Act of 1913, which took effect in 1914, created California's system of water rights and the distinction between junior and senior appropriative water rights.

Senior water right holders are those claiming appropriative water rights established prior to the Water Commission Act, and riparian water rights. Riparian water rights are rights granted to owners of land abutting a stream or river. In most instances, riparian rights share equal priority to the available natural flow and have seniority over appropriative water rights (both pre-1914 and post-1914). For appropriative rights, the priority system is based on the concept of "first in time, first in right."

The State Water Board administers California's system of water rights and is authorized to prevent illegal diversions of water. Illegal diversions include taking water at times when there is insufficient water available under the priority of right held by the diverter.



## Water Rights News

The State Water Board issued two letters earlier this year warning all water-right holders that their rights may be curtailed due to drought conditions. Last year, the State Water Board issued curtailment notices to more than 5,000 diverters on five watersheds statewide.

In April and early May of this year, the State Water Board issued curtailment notices for all post-1914 water rights in the Sacramento and San Joaquin River watersheds and the Delta. Curtailment notices were issued in the Scott River and Deer Creek watersheds as well.

In addition, the State Water Board approved a proposal from riparian water right holders in the Sacramento-San Joaquin River Delta on May 22 to voluntarily cut back water use in exchange for assurances that they would not face enforcement actions in the event that their riparian water rights are curtailed more severely later during the June-September growing season. Riparian water right holders had until June 1 to elect to participate in the voluntary program.

The senior water rights affected by today's notice add to the growing number of water rights restricted by the State's ongoing drought as demand far outstrips supply in key Northern California watersheds. As of this notice, a total of 8,721 junior water rights and 276 senior water rights in the Sacramento-San Joaquin River watersheds and Delta have been notified that there is insufficient water in the system to serve their rights.

To determine the need for curtailments, the State Water Board uses monthly diversion data and sorts that data by watershed, water right type and priority date. Water flow used for power generation that is diverted and returned back to the water course is removed from the analysis. The demands for water use by type of right are summed and plotted graphically to display junior and senior water right needs. To assess supply, monthly and daily natural flow data from the Department of Water Resources (DWR) are plotted with DWR estimates of return flows and additional minor tributary flows. The resulting Supply vs. Demand Curve indicates curtailment is needed when demand outstrips supply.

For this curtailment, several scenarios of delta and tributary demand were analyzed to produce conservative curtailment priority dates. As supplies continue to decline through the summer, it is expected that more senior rights will be subject to curtailment. As supply increases in the fall or winter, the State Water Board will lift the curtailment as soon as appropriate using the same procedure.

The State Water Board maintains a webpage to assist water right holders in several key watersheds to plan for possible limits on water supply availability. The webpage, titled "[Watershed Analysis](#)," details projected water supply, demand and availability for the watersheds most likely to face restrictions during the drought as demand outstrips available water supply.

A [Curtailment Fact Sheet](#) provides additional details on the curtailment process. Please visit our curtailment notification [website](#) to see what watersheds have received curtailment letters.



## Water Rights News

Information on the drought is available at the State Water Board's [drought website](#).

To learn about all actions the state has taken to manage our water resources and cope with the impacts of the drought, visit [Drought.CA.Gov](#). Every Californian should take steps to conserve water. Find out how at [SaveOurWater.com](#).

###

**Exhibit G**



STATE OF CALIFORNIA  
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY  
STATE WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS

**ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

---

In the Matter of Unauthorized Diversion by

**BYRON-BETHANY IRRIGATION DISTRICT**

---

SOURCE: Intake Channel to the Banks Pumping Plant (formerly Italian Slough)

COUNTY: Contra Costa

---

**YOU ARE HEREBY GIVEN NOTICE THAT:**

1. Byron-Bethany Irrigation District (BBID or District) is alleged to have diverted and used water in violation of California Water Code section 1052, subdivision (a), which provides that the diversion or use of water subject to Division 2 of the Water Code other than as authorized in Division 2 is a trespass.
2. Water Code section 1052, subdivision (c), provides that any person or entity committing a trespass during a period for which the Governor has issued a proclamation of a state of drought emergency may be liable in an amount not to exceed the sum of one thousand dollars (\$1,000) for each day the trespass occurs plus two thousand five hundred dollars (\$2,500) for each acre-foot of water diverted or used in excess of that diverter's rights. Water Code section 1052, subdivision (d)(2), provides that civil liability may be imposed administratively by the State Water Resources Control Board (State Water Board or Board) pursuant to Water Code section 1055.
3. Water Code section 1055, subdivision (a), provides that the Executive Director of the State Water Board may issue a complaint to any person or entity on whom Administrative Civil Liability (ACL) may be imposed. On June 5, 2012, the Executive Director delegated this authority to the Deputy Director for Water Rights. State Water Board Resolution 2012-0029 authorizes the Deputy Director for Water Rights to issue an order imposing an ACL when a complaint has been issued and no hearing has been requested within 20 days of receipt of the complaint. The Deputy Director for Water Rights has re-delegated this authority to the Assistant Deputy Director for Water Rights pursuant to State Water Board Resolution 2012-0029.

**ALLEGATIONS**

4. On June 30, 2010, BBID submitted an Initial Statement of Water Diversion and Use (Statement), which the State Water Board, Division of Water Rights (Division) designated as Statement 021256 (S021256). Under S021256, BBID claims a pre-1914 appropriative water right to the Intake Channel to the Banks Pumping Plant, formerly Italian Slough, in Contra Costa County. The Statement also indicates that BBID diverted approximately 26,179 acre-feet (af) in 2009 for municipal and industrial and agricultural use within its boundaries.
5. On July 1, 2013, BBID submitted Supplemental Statements for S021256, for the years 2010, 2011 and 2012. BBID's Supplemental Statements each indicates that the District first put water to use in 1917, and that the purpose of use for the District's diversions is irrigation of 12,500 acres. The 2010 Supplement Statement indicates that BBID diverted 25,269 af and applied

## Byron-Bethany Irrigation District

- approximately 22,302 af to beneficial use. The 2011 Supplemental Statement indicates that BBID diverted 22,344 af and applied 19,779 af to beneficial use. The 2012 Supplemental Statement indicates that BBID diverted 32,167 af and applied 28,345 af to beneficial use.
6. BBID does not hold or claim any other appropriative or riparian water rights on record with the State Water Board, although S021256 indicates that BBID holds Contract No. 14-06-200-785-LTR1 with the United States Bureau of Reclamation (Reclamation). In 2014 and 2015, Reclamation's agricultural contractors in the Delta were allocated zero percent of their contract quantity (available at <http://www.usbr.gov/newsroom/newsrelease/detail.cfm?RecordID=49115> [last accessed June 30, 2015]). BBID confirmed in a public statement dated June 12, 2015, that it had received zero water supply from Reclamation in both 2014 and 2015 (available at <http://bbid.org/wp-content/uploads/2015/06/BBID-Curtailment-Response-FINAL1.pdf> [last accessed June 30, 2015].)
  7. On January 17, 2014, Governor Edmund G. Brown Jr. issued Proclamation No. 1-17-2014, declaring a State of Emergency to exist in California due to severe drought conditions.
  8. Also on January 17, 2014, the State Water Board issued a "Notice of Surface Water Shortage and Potential Curtailment of Water Right Diversions" (2014 Shortage Notice). The 2014 Shortage Notice alerts water right holders in critically dry watersheds that water may become unavailable to satisfy beneficial uses at junior priorities.
  9. On April 25, 2014, Governor Brown issued a Proclamation of a Continued State of Emergency due to drought conditions, to strengthen the state's ability to manage water and habitat effectively in drought conditions.
  10. On May 27, 2014, the State Water Board issued a "Notice of Unavailability of Water and Immediate Curtailment for Those Diverting Water in the Sacramento and San Joaquin River Watershed with a post-1914 Appropriative Right" (2014 Unavailability Notice), which notifies all holders of post-1914 appropriative water rights within the Sacramento and San Joaquin River watersheds of the lack of availability of water to serve their post-1914 water rights, with some minor exceptions for non-consumptive diversions. The 2014 Unavailability Notice did not apply to pre-1914 appropriative rights such as that claimed by BBID. The State Water Board notified the most senior right holders in stages as water became available to serve their rights, and by November 19, 2014, had notified all right holders of availability for all diversions in the Sacramento and San Joaquin River watersheds.
  11. On January 23, 2015, the State Water Board issued a "Notice of Surface Water Shortage and Potential for Curtailment of Water Right Diversions for 2015" (2015 Shortage Notice). The 2015 Shortage Notice alerted water right holders in critically dry watersheds that water may become unavailable to satisfy beneficial uses at junior priorities.
  12. On February 4, 2015, the State Water Board issued Order WR 2015-0002-DWR, requiring pre-1914 and riparian water right claimants representing the top 90 percent of such claimants by volume in the Sacramento and San Joaquin River watersheds and the Delta to submit information relating to their claimed water right, the monthly amounts of water diverted and the basis of right claimed for diversions in 2014, and monthly diversion information and anticipated monthly diversion information for each month starting with February, 2015, to be submitted by the 5<sup>th</sup> of each succeeding month until the drought ends.
  13. BBID is subject to Order WR 2015-0002-DWR, and in response submitted information indicating that its predecessor, the Byron-Bethany Irrigation Company, recorded notice of an appropriation of water on or around May 18, 1914. Thus, BBID claims that its pre-1914 water right has a

## Byron-Bethany Irrigation District

priority date of May 18, 1914.<sup>1</sup>

14. BBID also submitted water diversion and use information for 2014, projected monthly diversions for 2015, and actual monthly diversions through May, 2015. BBID reports that it diverted 30,204 af in 2014 and projected diversions of 25,452 af in 2015. BBID's reported actual monthly diversion amounts for January through May, 2015, are generally similar to reported diversions for the same months in prior years where such information is available. BBID's reported projected diversions are similar to the reported actual diversions for the same months in prior years where such information is available. From August 1 to October 31, 2014, BBID reports it pumped 1,573 af of water under transfer that was approved by State Water Board Order dated August 27, 2014.
15. On April 1, 2015, Governor Brown issued Executive Order B-29-15 (Executive Order) to strengthen the state's ability to manage water and habitat effectively in drought conditions and called on all Californians to redouble their efforts to conserve water. The Executive Order finds that the continuous severe drought conditions present urgent challenges across the state including water shortages for municipal water use and for agricultural production, increased wildfire activity, degraded habitat for fish and wildlife, threat of saltwater contamination, and additional water scarcity if drought conditions continue. The Executive Order confirms that the orders and provisions in the Governor's previous drought proclamations and orders, the January 17, 2014, Proclamation, April 25, 2015, Proclamation, and Executive Orders B-26-14 and B-28-14, remain in full force and effect. On April 2, 2015, the State Water Board issued another notice warning that notices of unavailability of water were likely to be issued soon.
16. On April 23, 2015, the State Water Board issued a "Notice of Unavailability of Water and Immediate Curtailment for Those Diverting Water in the San Joaquin River Watershed with a Post-1914 Appropriative Right" (April 23 Unavailability Notice), which notifies all holders of post-1914 appropriative water rights within the San Joaquin River watershed of the lack of availability of water to serve their post-1914 water rights, with some minor exceptions for non-consumptive diversions. The State Water Board issued a similar notice for post-1914 appropriative water rights within the Sacramento River watershed on May 1, 2015 (May 1 Unavailability Notice). The April 23 and May 1 Unavailability Notices do not apply to pre-1914 appropriative rights such as that claimed by BBID.
17. On June 12, 2015, the State Water Board issued a "Notice of Unavailability of Water and Need for Immediate Curtailment for Those Diverting Water in the Sacramento-San Joaquin Watersheds and Delta with a Pre-1914 Appropriative Claim Commencing During or After 1903" (June 12 Unavailability Notice), which notifies all holders of pre-1914 appropriative water rights with a priority date of 1903 and later within the Sacramento and San Joaquin River watersheds of the lack of availability of water to serve their rights, with some minor exceptions for non-consumptive uses.
18. Drought management of water rights is necessary to ensure that water to which senior water right holders are entitled is actually available to them, which requires that some water remain in most streams to satisfy senior demands at the furthest downstream point of diversion of these senior water rights. The June 12 Unavailability Notice reflects the State Water Board's determination that the existing water available in the Sacramento-San Joaquin watersheds and the Delta is insufficient to meet the demands of diverters with claims of pre-1914 appropriative rights with a priority date of 1903 and later. Continued diversion when there is no water available under the priority of the right constitutes unauthorized water diversion and use. Unauthorized diversion is subject to enforcement. (Wat. Code § 1052.)

<sup>1</sup> The term "pre-1914" appropriative water right means those appropriative rights commenced prior to December 19, 1914, the effective date of the Water Commission Act. Therefore, it is possible to have a "pre-1914" appropriative water right with a priority date in 1914.

## Byron-Bethany Irrigation District

19. The State Water Board determines the availability of water for water rights of varying priorities in any watershed by comparing the current and projected available water supply with the total water right diversion demand.
20. To determine water availability, the Board relies upon the full natural flows of watersheds calculated by the Department of Water Resources (DWR) for certain watersheds in its Bulletin 120 and in subsequent monthly updates. "Full natural flow," or "unimpaired runoff," represents the natural water production of a river basin, unaltered by upstream diversions, storage, storage releases, or by export or import of water to or from other watersheds. The full natural flow amount is different than the measured stream flows at the given measurement points because the measured flows may be higher or lower due to upstream operations. Forecasted flow data is uncertain, so DWR provides the data in the form of "levels of exceedance" or simply "exceedance" to show the statistical probability that the forecasted supply will occur. The exceedance is simply the percent of the time that the actual flow is expected to exceed the projected flow. The 90 percent exceedance hydrology assumes inflows from rainfall and snowmelt at levels that are likely to be met or exceeded by actual flows with a 90 percent probability, or in other words, there is a ten percent or less chance of actual conditions turning out to be this dry or drier. In April and early May, the State Water Board uses the 90% and 99% exceedance amounts for its analyses due to low flow conditions. DWR's daily natural flow calculations are also used in the analysis.
21. To determine water demand, the State Water Board relies on information supplied by water right holders on annual or triennial reports of water diversion and use required to be true and accurate to the best of the knowledge of the diverters. The Board also incorporates 2014 diversion data submitted pursuant to Order WR 2015-0002. All reported monthly water diversion data is compiled by watershed, type of right and priority dates. The Board performs quality control checks and removes obvious errors, excess reporting, removes demand for direct diversion for power, and makes additional changes based on stakeholders' input. The corrected demand data includes the 2014 reported data for 90% of the watershed demand plus, for the remaining diverters, an averaged diversion amount for 2010 through 2013. These monthly diversion demands are grouped into water right types (riparian, pre-1914 and post-1914 rights).
22. The State Water Board consistently adjusts the water availability and demand analyses based on new information obtained from stakeholders, or adjustments to projected flows from the DWR. State Water Board staff reviews this information and provides revisions to its data set and graphs that are all shown on the Watershed Analysis website ([http://www.waterboards.ca.gov/waterrights/water\\_issues/programs/drought/analysis/](http://www.waterboards.ca.gov/waterrights/water_issues/programs/drought/analysis/)).
23. The State Water Board's Watershed Analysis website provides updated graphical summations and spreadsheets containing supporting analysis of the availability and demand analyses. The graphical summations show priorities with monthly demands for the total riparian demand at bottom, the pre-1914 demands added to riparian and depicted above the riparian demand. The monthly amounts are averaged into cubic feet per second for graphical purposes. See, for example, the combined Sacramento/San Joaquin River Basin Senior Supply/Demand Analysis ([http://www.waterboards.ca.gov/waterrights/water\\_issues/programs/drought/analysis/docs/sacsjic\\_ombined.pdf](http://www.waterboards.ca.gov/waterrights/water_issues/programs/drought/analysis/docs/sacsjic_ombined.pdf)). The Curtailment Analysis website also provides graphical summations of the San Joaquin River Basin Senior Supply/Demand Analysis with Proportional Delta Demand ([http://www.waterboards.ca.gov/waterrights/water\\_issues/programs/drought/analysis/docs/sjprorate.pdf](http://www.waterboards.ca.gov/waterrights/water_issues/programs/drought/analysis/docs/sjprorate.pdf)) and the Sacramento River Basin Senior Supply/Demand Analysis with Proportional Delta Demand ([http://www.waterboards.ca.gov/waterrights/water\\_issues/programs/drought/analysis/docs/sacprorated.pdf](http://www.waterboards.ca.gov/waterrights/water_issues/programs/drought/analysis/docs/sacprorated.pdf)).
24. This analysis shows that by June 12, 2015, available supply was insufficient to meet the demands of appropriative rights with priority dates of 1903 and later throughout the Sacramento and San Joaquin River watersheds and the Delta.

## Byron-Bethany Irrigation District

25. The June 12 Unavailability Notice applies to S021256 because BBID claims a priority date of May 18, 1914. BBID received an electronic copy of the June 12 Unavailability Notice on June 12, 2015, via the Board's "Drought Updates" Lyrus email list system, because Rick Gilmore, BBID's General Manager is a subscriber to that system (via email address [r.gilmore@bbid.org](mailto:r.gilmore@bbid.org)). Moreover, BBID issued a public statement on June 12, 2015, in response to the June 12 Unavailability Notice (available at <http://bbid.org/wp-content/uploads/2015/06/BBID-Curtailment-Response-FINAL1.pdf> [last accessed June 25, 2015].) BBID received a paper copy of the June 12 Unavailability Notice no later than June 15, 2015.
26. BBID's diversions are recorded by DWR and posted to the California Data Exchange Center (CDEC) (<http://cdec.water.ca.gov/cgi-progs/queryDaily?BB>) also available at <http://www.water.ca.gov/swp/operationscontrol/docs/delta/DeltaHydrology.pdf>). CDEC reports that BBID has diverted water each day since the June 12 Unavailability Notice:

Date	Avg Diversion Rate (cfs)	Amount Diverted (af)	Date	Avg Diversion Rate (cfs)	Amount Diverted (af)
06/13/2015	91	180	06/20/2015	96	190
06/14/2015	122	242	06/21/2015	99	196
06/15/2015	79	156	06/22/2015	62	123
06/16/2015	83	164	06/23/2015	61	121
06/17/2015	78	154	06/24/2015	67	132
06/18/2015	91	180	06/25/2015	36	71
06/19/2015	80	158	06/26/2015	0	0

27. The daily diversion rates through June 24 are comparable to the District's average daily diversion rates reported for June 2014 (4,842 af/30 days/1.9835=81.4 cfs), and those BBID reported as anticipated for June 2015. This daily rate is in excess of the basic minimum health and safety needs of Mountain House Community Service District. This indicates that BBID has continued its normal diversions following the June 12 Unavailability Notice.
28. BBID diverted a total of approximately two thousand sixty-seven (2,067) acre-feet over the course of thirteen days following the June 12 Unavailability Notice, specifically from June 13 through June 25, 2015.
29. On July 15, 2015, the State Water Board issued a Clarification to the Unavailability Notices indicating that, to the extent that any of the notices described above contain language that may be construed as an order requiring you to curtail diversions under your affected water right, that language has been rescinded. Similarly, any language requiring affected water right holders to submit curtailment certification forms has been rescinded.
30. Diversion or use of water by an appropriative water right holder when there is insufficient water supply available for that water right is an unauthorized diversion or use of water subject to Division 2 of the Water Code. Water Code section 1052, subdivision (a) provides that unauthorized diversion or use of water is a trespass.
31. This enforcement action is based on lack of available water supply under the priority of the right. The Unavailability Notices were issued for the purpose of advising the public and water diverters of the lack of available water under the priority of the rights identified in each notice; the notices are not the basis for this enforcement action.

#### PROPOSED CIVIL LIABILITY

32. Water Code section 1052 provides that the maximum civil liability that can be imposed by the State Water Board in this matter for the unauthorized diversion and use of the water during a

## Byron-Bethany Irrigation District

- drought period is \$1,000 for each day of trespass plus \$2,500 for each acre-foot of water diverted or used in excess of that diverter's water rights.
33. Evidence demonstrates that BBID's unauthorized diversions began on June 13, 2015, and continued until June 25, 2015, for a total of thirteen (13) days. Over that period, BBID diverted approximately two thousand sixty-seven (2,067) acre-feet of water in excess of that available to serve its claimed water right.
  34. Therefore, the maximum civil liability for the alleged violations is \$5,180,500 [13 days at \$1,000 per day plus 2,067 acre-feet at \$2,500 per acre-foot].
  35. In determining the amount of civil liability, California Water Code section 1055.3 requires that the State Water Board consider all relevant circumstances, including, but not limited to, the extent of harm caused by the violation, the nature and persistence of the violation, the length of time over which the violation occurs, and any corrective action taken by the violator.
  36. In this case, BBID has made unauthorized diversions of water from the Intake Channel to the Banks Pumping Plant (formerly Italian Slough) during the most extreme drought in decades, when there was insufficient water supply available for BBID's claimed water right. BBID was aware that the State Water Board had determined that there was insufficient water supply available for BBID's claimed water right. These unauthorized diversions have reduced or threatened to reduce the amount of water available for downstream water right holders during an extreme drought emergency. Moreover, BBID's diversions likely reduced the water available for instream resources and riparian habitat within the Delta during an extreme drought emergency.
  37. BBID received an economic advantage over other legitimate water diverters in the area by foregoing the costs of buying replacement water during the violation period. During 2015, irrigation districts north of the Delta have paid at least \$250 per acre-foot of replacement water. Thus, by illegally diverting 2,067 acre-feet of water from June 13 through June 25, BBID avoided purchased water costs of at least \$516,750.
  38. The Division estimates that its staff cost to investigate the unauthorized diversion issues and develop the enforcement documents to be \$3,000.
  39. BBID is known to be serving water to Mountain House Community Service District and to power generation facilities that may be deemed critical energy suppliers. BBID and Mountain House Community Service District took corrective actions to secure water available via contract and transfer. Although these supplies were not provided during the violation period identified above, they are recognized as progressive correction actions to prevent unauthorized diversions. Also taken into consideration is the fact that BBID has stopped its diversions from June 26.
  40. Having taken into consideration the factors described above, the Assistant Deputy Director for Water Rights recommends an ACL for the unauthorized diversion of water in the amount of \$1,553,250. The recommended penalty is based on the circumstances known to this time, BBID's continued diversions despite lack of availability of water to serve its right during extreme ongoing drought conditions, and to provide a strong disincentive for continued unauthorized diversions by BBID and any similarly-situated parties. The Prosecution Team will consider adjustment of the recommended penalty if BBID provides evidence of the amounts of water pumped that were for health and safety needs or critical power generation.
  41. Should the matter go to hearing, the State Water Board may consider a different liability based on the evidence received, including additional staff costs incurred, up to the maximum amount provided by law. It is estimated that if this matter goes to hearing, additional staff costs incurred for the prosecution staff would be approximately \$10,000.

**RIGHT TO HEARING**

- 42. BBID may request a hearing on this matter before the State Water Board. Any such request for hearing must be in writing and received or postmarked within 20 days of the date this notice is received. (California Water Code, § 1055, subd. (b).)
- 43. If BBID requests a hearing, BBID will have an opportunity to be heard and to contest the allegations in this Complaint and the imposition of an ACL by the State Water Board. If a hearing is requested, separate notice setting the time and place for the hearing will be mailed not less than 10 days before the hearing date.
- 44. If BBID requests a hearing, the State Water Board will consider at the hearing whether to impose the civil liability, and, if so, whether to adjust the proposed liability within the amount authorized by statute. Based on the evidence received at the hearing, the State Water Board may take any appropriate action in accordance with sections 100, 275, and 1050 et seq. of the California Water Code and its responsibilities under the public trust doctrine. Any State Water Board order imposing an ACL shall become final and effective upon issuance.
- 45. If BBID does not wish to request a hearing, please remit a cashier's check or money order within 20 days of the date of this Complaint for the amount of the ACL set forth above to:  
  
State Water Resources Control Board  
Division of Water Rights  
Enforcement Section  
P.O. Box 2000  
Sacramento, CA 95812-2000
- 46. If BBID does not request a hearing and does not remit the ACL amount, the State Water Board may seek recovery of the ACL amount as authorized by Water Code section 1055.4.

STATE WATER RESOURCES CONTROL BOARD



John O'Hagan, Assistant Deputy Director  
Division of Water Rights

Dated: JUL 20 2015

# Exhibit H





# Enforcement News

## **Byron-Bethany Irrigation District Served with Draft Administrative Civil Liability, \$1.5 Million Penalty**

*First senior water right enforcement action in 2015*

**FOR IMMEDIATE RELEASE**  
July 20, 2015

Contact: George Kostyrko  
[George.Kostyrko@waterboards.ca.gov](mailto:George.Kostyrko@waterboards.ca.gov)

**SACRAMENTO** – The State Water Resources Control Board today issued a draft Administrative Civil Liability Complaint to Byron-Bethany Irrigation District for unauthorized diversion and use of water, and has proposed a \$1.5 million penalty for the alleged violations. This allegation is the first such enforcement complaint for a senior water right holder in 2015, related to drought conditions.

Byron-Bethany Irrigation District, located in Byron, has a pre-1914 right of May 1914 to draw water from the intake channel at the Banks Pumping Plant in Contra Costa County formerly known as Italian Slough. On June 12, 2015, the State Water Board notified all pre-1914 appropriative right holders with a priority date of 1903 or later in the Sacramento-San Joaquin watersheds and Delta that there was insufficient supply available to meet the needs of all water right holders, and that water was no longer available for diversion under their right.

Diversion records kept by the Department of Water Resources and posted to the California Data Exchange Center indicate that Byron-Bethany continued to divert water until approximately June 25, despite knowing from June 12 that water was no longer available under its priority of right.

The proposed Administrative Civil Liability is based on the enhanced drought penalty structure approved by the Legislature and signed by Governor Edmund G. Brown Jr. in 2014.

Byron-Bethany Irrigation District may request a hearing before the State Water Board within 20 days of receiving the draft complaint. If the District does not request a hearing, the State Water Board intends to adopt the Administrative Civil Liability Order.

CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY



**STATE WATER RESOURCES CONTROL BOARD**  
1001 I Street, Sacramento, CA 95814 • Mailing Address: P.O. Box 100, Sacramento, CA 95812-0100 • [www.waterboards.ca.gov](http://www.waterboards.ca.gov)





## Enforcement News

The State Water Board has committed significant resources to ensuring the water rights priority system is maintained during the drought. In 2015, as in 2014, the State Water Board informed more than 5,000 water right holders that there is not enough water to meet their needs and has committed staff resources to conduct field inspections once again.

For more on Byron-Bethany Irrigation District's draft Administrative Civil Liability Complaint, see the documents on the Division of Water Rights [enforcement webpage](#).

For more than two years, California has been dealing with the effects of drought. To learn about all the actions the state has taken to manage our water system and cope with the impacts of the drought, visit [Drought.CA.Gov](#).

Every Californian should take steps to conserve water. Find out how at [SaveOurWater.com](#).

###

**Exhibit I**



# News Advisory

## State Water Board to Host Telephone Media Conference Call on Recent Water Right Enforcement Activities at Noon Today

FOR IMMEDIATE RELEASE  
July 20, 2015

Contact: George Kostyrko  
George.Kostyrko@waterboards.ca.gov

The State Water Resources Control Board recently reissued a water supply availability notice to holders of more than 9,300 water rights, and **as of last week began to issue a variety of water right enforcement actions related to drought conditions in 2015**. Due to the high level of media attention on these actions, a media availability will take place at noon to discuss these events and actions going forward.

**What:** Telephone news conference for *Accredited News Media Only*.

**Where:** Call 1- (888) 713-3595. Tell the operator you are calling for the *Water Right Activities Update* operator-assisted teleconference. The operator will ask for name and media affiliation.

**When:** Noon PDT July 20, 2015

### ACCREDITED MEDIA ONLY

The State Water Board will make an opening statement regarding the recent activities involving the Division of Water Rights. During the question and answer session following the statement, media may ask one initial question with one follow-up. If time allows, reporters may get back in the queue for additional questions.

Division of Water Right staff scheduled for the call include:

**John O'Hagan**, Assistant Deputy Director, Division of Water Rights  
**Kathy Mrowka**, Enforcement Chief for the Division of Water Rights  
**Andrew Tauriainen**, Office of Chief Counsel, Division of Water Rights

###



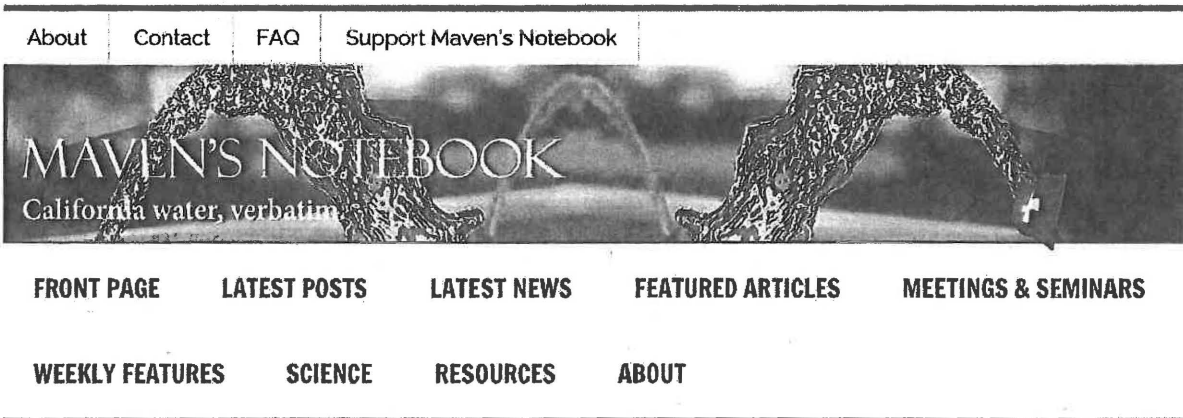
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

STATE WATER RESOURCES CONTROL BOARD

1001 I Street, Sacramento, CA 95814 • Mailing Address: P.O. Box 100, Sacramento, CA 95812-0100 • www.waterboards.ca.gov



# Exhibit J



## Media call: State Water Board officials discuss recent enforcement actions

July 20, 2015 Maven Media Calls & Misc

Earlier today, State Water Board officials held a media call to discuss the recent water right enforcement actions, and to provide media the opportunity to ask questions.



On the media call today, is Andrew Tauriainen, the attorney prosecuting these matters on behalf of the Division of Water Rights; John O'Hagan, Assistant Deputy Director for the Division of Water Rights; and Kathy Mrowka, Enforcement Chief for the Division of Water Rights.

Here's what they had to say.

George Kostyrko, Director of Public Affairs for the State Water Board, opened the media call by reminding of the media call on May 22 discussing the riparian rights holders' voluntary proposal of 25% reduction. "At that time, media asked questions about how the Division of Water Rights follows up on reports of allegations of priority of right abuses, and what our enforcement approach would be. We told you at that time

[Click here for the FRONT PAGE](#)



**HELP SUPPORT MAVEN'S NOTEBOOK!**

Help fill up Maven's glass!

MAVEN'S NOTEBOOK remains only half-funded for the year ...



[Click here to find out how you can help](#)

*that our inquiry and investigative process was confidential, but if we found that allegations had some merit, and enforcement actions would follow, which would then be public, which in this case, the complaints that are on our website as well as the press release are the public piece of that. These are the first such enforcement actions for 2015 and have moved from an inquiry to an investigation and then to a public enforcement action. Expect more enforcement actions in the coming weeks and months."*

He then turned it over the Andrew Tauriainen.

## ANDREW TAURIAINEN, Prosecuting Attorney for the State Water Board's Division of Water Rights

*First I want to share some background on the State Water Board's water right enforcement authority and process, then I'll talk about the recent drought activities and investigation, and finally I'll discuss the recent enforcement cases, including the one issued this morning.*

*Section 1052 of the California water code provides that the diversion of water when no water is available pursuant to a diverter's water right is an unauthorized diversion and a trespass. The State Water Board's Division of Water Rights has a number of tools under the water code to address unauthorized diversions. The Division can issue a draft cease and desist order when there is an ongoing or threatened unauthorized diversion. Cease and desist orders are a type of administrative injunction that direct parties to stop or to prevent unauthorized diversion. The Division can also issue administrative civil liability complaints to address past unauthorized diversions. Administrative civil liabilities are monetary penalties for past unauthorized diversions.*

*In 2014, the legislature approved and the Governor signed an enhanced penalty structure for unauthorized diversions during drought emergencies. Unauthorized diversions during drought emergencies are subject to penalties of up to \$1000 per day, and \$2500 per acre-foot of water diverted without right.*

*Parties named to draft cease and desist orders or to administrative civil liability complaints may request a hearing before the State Water Board, provided that they make the hearing request in writing within 20 days of receiving the draft*

How you can help

### SIGN UP FOR DAILY EMAIL SERVICE

Sign up for daily email service and receive a single email with all the Notebook's content by gam. Breaking news alerts, too!

Enter your email address

Sign me up!

### SIGN UP FOR INSTANT EMAIL SERVICE

Want your news sooner than gam? Enter your email address for this list and you'll receive an email instantly, every time there's a new post!

Enter your email address

Sign me up!

### CALENDAR



### SEARCH THE NOTEBOOK

Enter your search term here to search all posts:

*order or complaint. If the party does not request a hearing, the division will issue the final order directly. If the named parties do request a hearing, then the Division of Water Rights hearing team will set a hearing schedule before the board.*

*I want to make it clear that any enforcement order, whether a draft cease and desist order or an administrative civil liability order, would become final only after notice and an opportunity for hearing by the defendant. This is the standard process that the Division of Water Rights has followed throughout its history.*

*Due to the acute nature of this drought and the unavailability of water, particularly this year, this process has attracted appropriate attention.*

*Earlier this year, water rights holders were notified that due to conditions stemming from the drought, and projections on water availability in key watersheds, notifications would be issued that would water would soon be unavailable for certain classes of water right holders. These initial notices were sent in January and again in April. At that time, water right holders were informed that water was unlikely to be available and to seek out alternative sources if an uninterrupted supply of water was needed.*

*In April, May, and June of this year, the Division of Water Rights began to notice water right holders in key watersheds such as the Sacramento, San Joaquin, and the Delta that water was unavailable for certain priorities of rights. So far this year, more than 9300 junior and senior water right holders have been told that water is unavailable under their priority of right. In these notices, water right holders were reminded that diversion is always subject to water availability limitations and diversions under specific affected water rights may be subject to enforcement, should the State Water Board find such diversions are or were unauthorized.*

*Since that time, the State Water Board has continued its drought year inspections to determine whether diverters are using water to which they are not entitled. So far, the Division has conducted approximately 250 inspections in 2015. A number of parties who received the notices from April, May, and June have filed lawsuits against the board, challenging those notices. Byron Bethany Irrigation District filed a lawsuit challenging the June 12 notice that was issued to pre-1914*

Browse posts, filtering by category and/or tag:

All Categories  
All Tags

Submit

MAVEN'S TROPHY CASE



STAY IN TOUCH

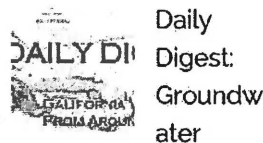


EXPLORE CONTENT

Latest Posts

Tag cloud

Categories



pumping causing Central Valley bridges to sink; How the ongoing El Niño compares to the mother of all El Niño events; Salt slowly crippling almond



*water right holders. I can't speak to the specifics of each of the individual cases, but I can generalize that in these cases, the plaintiffs have all generally asked the board to not enforce the water right notices that were issued in April, May, and June, but instead to use the traditional water right enforcement process, which is what I described to you at the top of my statement.*

*Recently the parties to one of the lawsuits, not Byron Bethany, sought and obtained a temporary restraining order prohibiting the State Water Board from enforcing the April, May, and June notices. However, in issuing the temporary restraining order, the judge specifically stated that the Board remains free to enforce against violations of the water code, including for unauthorized diversions. On July 15, last week, the State Water Board issued a clarification to those earlier notices, rescinding the portions of those notices that the court found to be objectionable. So in effect, the April, May, and June notices simply put the recipients on notice that the Division of Water Rights has done the math and has concluded there is no water available to serve the various water right categories addressed in each notice. The notices themselves are not enforceable orders, but parties who divert water knowing that no water is available for them remain subject to enforcement for unauthorized diversion.*

*Later last week, the Division of Water Rights issued two draft cease and desist orders, one to the West Side irrigation District, located in the Delta, and one to a riparian water right holder and property owner in Trinity County who was alleged to be illegally obtaining and hauling water from a stream for bulk water sales.*

*This morning the division of Water Rights notified Byron Bethany Irrigation District that the Division is issuing an administrative civil liability complaint, alleging that Byron Bethany diverted water after June 12, when it knew that water was not available to serve its priority of right. The Division began investigating Byron Bethany Irrigation District shortly after the June 12 notice, and found evidence that Byron Bethany continued to divert water, despite knowing that no water was available under its priority of water right. The Byron Bethany administrative civil liability complaint is the first to be issued seeking penalties under the new enhanced penalty structure adopted last year. The complaint proposes a penalty*

industry, says Almond Doctor; Enviro groups oppose dam legislation, and more

...

July 22, 2015



This just in ...  
CSPA files

complaint, says State Water Board, Reclamation, and DWR are violating the Bay Delta Plan, D1641 requirements, Clean Water Act, Endangered Species Act, and more ...

July 22, 2015



Water Rate Making after

Capistrano Taxpayers Association v. San Juan Capistrano

July 22, 2015



Daily Digest: State proposes

\$1.5 million fine of water district for improper diversions; Fires followed by floods; California faces a dramatic climatic year; El Nino likely coming, but will it make a difference?; and more ...

July 21, 2015



*of just over \$1.5 million dollars for the alleged unauthorized diversion.*

*It's highly likely that additional enforcement actions relating to violations of priority of right and unauthorized diversion will follow in the weeks and months ahead. The Division of Water Rights expects that the recipients of all these enforcement actions will request hearings before the board. The State Board's hearing unit will schedule those hearings and set each for schedule at a later date.*

### Question and answers (highlights)

**Question:** Do you feel that the water board currently has enough authority to do what it needs to do to enforce all of these actions and drought measures, or do you feel like you need more, and if so, what would it be?

**Andrew Tauriainen:** *"In terms of does the State Board have enough authority, the water code provides significant authority to enforce against unauthorized diversion. The legislature and the Governor provided some additional tools or additional penalties for drought last year, which has been very helpful, it allows for a bigger threat for these monetary penalties for unauthorized diversion. I am a prosecutor, I can't necessarily speak to bigger policy questions about what other tools we might need or be able to use, but I can say that given the resources that we have, and the legislature has provided some additional resources to us this year, we're doing all the investigations we can and we'll bring about all the enforcement actions that we can."*

**Question:** Is the enforcement action against Byron Bethany Irrigation District related to water being diverted to Mountain House? And why does the action end on June 25 – did they stop diverting?

**Andrew Tauriainen:** *"We don't have any evidence at this time about how much water Byron Bethany may have been diverting for Mountain House during the period of June 12 through the 25<sup>th</sup>. The reason we include June 13 through the 25 is that those are the days for which we have evidence so far that they were diverting. It appeared based on the amount of their diversion that they were diverting for their normal irrigation purposes and not simply to deliver water to Mountain*



Blog round-up:

Speaker Boehner blames CA drought on Obama, Public land management at a crossroads, Water wars from the top of the watershed, Groundwater crap detecting 101, and more ...

July 21, 2015

#### MAVEN'S PHOTO LIBRARY ON FLICKR



[Click here to visit Maven's photo library on flickr.](#)

#### RSS FEED BY CATEGORY

- Everything
- Featured Articles
- Daily Digest
- Other News
- Weekly Features
- Meetings and Seminars
- Science

*House. I expect this to be an issue that comes up in the hearing on this civil liability complaint."*

**Question:** How do choose who to inspect? What goes into that thinking?

**Kathy Mrowka:** *"We have a programmatically decided we are going to do inspections. We have a list of questions we ask ourselves for all the parties that we're going to inspect – what is the size of their diversion, is it their current diversion season, questions like that that we look at. We're scheduling the inspections; we are trying to schedule 1000 inspections for this particular diversion season, so quite a large number of the diverters will be inspected this year. Last year we inspected 950 diverters, so we have a very active program. What you've seen here in this action came about as a result of a lot of research of the facts and information that we were able to gather."*

**Question:** Why were the penalties for Byron Bethany Irrigation District reduced and not the maximum possible?

**Andrew Tauriainen:** *"The statutory maximum penalty in a case like this would be fact allegations, is just about \$5 million. The water code also requires consideration of all appropriate circumstances in both proposing and adopting civil liability penalties. In the complaint, we describe the circumstances that the prosecution feels are appropriate and why the \$1.5 million is an appropriate penalty. This is a process that we do for all administrative civil liability complaints, not just these drought related ones, and although cases are considered on a case by case basis, the process here that we've done with this complaint is largely in line with others that we've done in the past. I do want to make it clear though that if this case goes to hearing before the State Board, the State Board has discretion to issue a penalty of any size it sees fit, or no penalty, up to and including the statutory maximum. So this is the first case of this kind that will likely go to the board. Certainly the first case under the new enhanced penalty structure, and I do expect the board to take a very close look at all the circumstances surrounding this diversion and others that may come before it when it decides what size penalty to come up with. I wouldn't be surprised if the Board came up with a penalty much higher than what is proposed here."*

Question: What kind of enforcement did you do last year? Did you have any enforcement actions based on last year's letter?

Andrew Tauriainen: *"A large category of the folks that received those letters last year claimed they had senior rights that weren't curtailed, and that, given the nature of the way water rights records are kept and the fact that a lot of these senior rights are really, really old and aren't necessarily on record with the State Water Board, because we only really have detailed records about the post 1914 water rights, it requires a lot of additional investigation to develop those cases. There are, I'm sure, several cases of folks who were diverting when they shouldn't, and there were many who stopped diverting because they didn't have water available to them. Our resources are somewhat limited here and we're taking the cases as we can get them and as we can develop them, and there's a lot that goes into working out each of these cases and setting the priorities."*

John O'Hagan: *"I want to point out that last year, the notices of unavailability of water went out to post 1914 water rights only, and most of those water right holders are familiar with our process and the junior nature of their rights, and our enforcement resources for that are out in the field act as a deterrent to unauthorized diversions so that is one of the purposes of having resources out in the field on a regular basis is to make a showing of field presence so that the diverters know that we are watching. ..."*

Question: In the Byron Bethany case, will the Board have to prove that water was unavailable?

Andrew Tauriainen: *"Any of these enforcement actions that we issue, any of the fact allegations that are stated in them are allegations that the prosecution has to prove and the Board will have to consider and make findings on. In the case of everything we did last week and this week, specifically includes the question of whether or not water is available at a specific diverter's right. ... The Division of Water Rights has done the math and determined the water is not available. In order to issue an enforcement order, whether it's a cease and desist order or administrative civil liability order, the Board will have to make specific findings regarding water availability and we the prosecutors have to prove that up in these cases."*

**Question:** Are these three actions a result of complaints filed by third parties?

**Andrew Tauriainen:** *"We can take enforcement action based on information that we get from a number of sources including third party complaints or complaints from the public, or as happened in this case, from our own inspections and our own investigations. I'm not sure about the Trinity County case because I'm not the prosecutor on that case, but the West Side and the Byron Bethany cases are both the result of inspections from Board staff."*

**Question:** Last week you issued a cease and desist order against West Side and today you're proposing a penalty as part of the administrative complaint against Bethany. How do you decide whether to issue a cease and desist order to go right ahead and propose that fine?

**Andrew Tauriainen:** *"The big distinction between those two processes are an administrative civil liability is a penalty for a past unauthorized action, and the complaint we issued this morning to Byron Bethany, based on what we know at the time of the complaint, Byron Bethany stopped their unauthorized diversions, so all of their actions are in the past. Now a draft cease and desist order goes out if there is either actual ongoing unauthorized diversion, or threatened unauthorized diversion – now threatened unauthorized diversion can be shown in a variety of ways. But in this kind of circumstance, it's usually a party that's threatening to divert in a most public fashion. There have been many different news statements and other kinds of statements that a lot of these parties have made saying that they are going to keep diverting, essentially challenging us to do enforcement. A draft cease and desist order is for something that's going on now or something that we think is likely to go on in the very near future so we seek these orders to stop that from happening, so one's an injunctive to prevent current or future unauthorized diversions; the other one is a penalty for past unauthorized diversions."*

### For more information ...

- Visit the State Water Board's Drought Year Actions page

- Byron-Bethany Irrigation District Served with Draft Administrative Civil Liability, \$1.5 Million Penalty (press release)
- Trinity County Property Owner Issued Draft Cease and Desist Order for Unauthorized Water Diversion, Bulk Water Delivery (press release)
- West Side Irrigation District Issued Draft Cease and Desist Order for Unauthorized Diversion (press release)

---

## Get the Notebook blog by email and you'll always be one of the first to know!

- Sign up for daily emails and get all the Notebook's aggregated and original water news content delivered to your email box by 9AM. Breaking news alerts like this one, too. Sign me up!



Maven's Notebook

*constantly watching over the world of California water*

Share this:



### Related Posts:

1. This just in ... Media call: Federal and state officials announce increased SWP allocations to 5%, water for refuges, barriers in the Delta, and actions being taken to benefit fish
2. Media call: Federal and state officials discuss Sacramento River temperature management operations
3. Media call: State and federal officials discuss the 2015 Drought Operations Plan

Leave a comment  sliderbox

Leave a Reply

Enter your comment here...

**BDCP ROAD MAP**



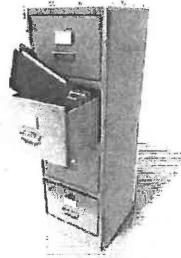
Click here to visit the BDCP Road Map.

**LIBRARIES AND DIRECTORIES**



Click to check out the Notebook's libraries and directories of really useful information.

**NOTEBOOK FILE CABINET**



Click here to view the Notebook's information resources.

**SUPPORT MAVEN'S NOTEBOOK!**



Make a tax-deductible donation today!

**KEEP IN TOUCH ...**



# MAVEN'S NOTEBOOK

*The diary of a confessed obsessive-compulsive California water news junkie*

This website was developed, built, and implemented by Chris Austin (Maven) using the Smartline theme by Theme Zee. ©

Maven's Notebook, 2015  
Thank you for visiting!

1 PROOF OF SERVICE

2 I, LAURA CUMMINGS, certify and declare as follows:

3 I am over the age of 18 years, and not a party to this action. My business address is 5757  
4 Pacific Avenue, Suite 222, Stockton, California 95207, which is located in the county where the  
mailing described below took place.

5 I am readily familiar with the business practice at my place of business for collection and  
6 processing of correspondence for mailing. On July 23, 2015 at my place of business a copy of  
**DECLARATION OF KARNA E. HARRIGFELD IN SUPPORT OF GRANTING**  
7 **PRELIMINARY INJUNCTION** was placed for deposit following ordinary course of business  
as follows:

8 [ ] BY U.S. MAIL with the United States Postal Service in a sealed envelope, with postage  
9 thereon fully prepaid.

10 Kamala D. Harris  
11 Attorney General of California  
12 Tracy L. Winsor  
13 Gavin G. McCabe  
14 Supervising Deputy Attorneys General  
15 Clifford T. Lee  
16 Matthew G. Bullock  
17 Deputy Attorneys General  
18 455 Golden Gate Avenue, Suite 11000  
19 San Francisco, CA 94102-7004

20 *Attorneys for Defendants and Respondents*  
21 *California State Water Resources Control Board, et al.*

22 John Herrick  
23 LAW OFFICES OF JOHN HERRICK  
24 4255 Pacific Avenue, Suite 2  
25 Stockton, CA 95207

26 *Attorney for South Delta Water Agency*

27 Dante John Nomellini  
28 Daniel A. McDaniel  
29 Dante John Nomellini, Jr.  
30 NOMELLINI, GRILLI & McDANIEL  
31 PROFESSIONAL LAW CORPORATIONS  
32 235 East Weber Avenue  
33 Stockton, California 95202

34 *Attorneys for Central Delta Water Agency*

35 Jennifer L. Spaletta  
36 SPALETTA LAW, PC  
37 Post Office Box 2660  
38 Lodi, CA 95241

39 *Attorney for Central Delta Water Agency*



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

S. Dean Ruiz  
HARRIS, PERISHO & RUIZ  
3439 Brookside Road, Suite 210  
Stockton, CA 95219

*Attorney for Woods Irrigation Company*

BY ELECTRONIC MAIL (EMAIL) - By sending the document(s) to the person(s) at the email address(es) listed below.

Matthew.Bullock@doj.ca.gov  
Cliff.Lee@doj.ca.gov  
jherrlaw@aol.com  
ngmplcs@pacbell.net  
jennifer@spalettalaw.com  
dean@hprlaw.net

BY FEDERAL EXPRESS/OVERNIGHT MAIL in a sealed envelope, with postage thereon fully prepaid. [Code Civ. Proc., §§ 1013(c), 2015.5.]

BY PERSONAL SERVICE/HAND DELIVERY.

BY FACSIMILE at approximately \_\_\_\_\_m. by use of facsimile machine telephone number (209) 472-7986. I caused the facsimile machine to print a transmission record of the transmission, a copy of which is attached to this declaration. The transmission was reported as complete and without error. [Cal. Rule of Court 2008 and 2003(3).]

I certify and declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: July 23 2015

  
LAURA CUMMINGS

