
State Water Resources Control Board

October 16, 2015

VIA ELECTRONIC MAIL

Division of Water Rights
State Water Resources Control Board
Attention: Ernest Mona
wrhearing@waterboards.ca.gov

Dear Hearing Officer Spivy-Weber and Hearing Team:

WSID DRAFT CDO HEARING - PROSECUTION TEAM REQUEST REGARDING EXHIBIT AND WITNESS STATEMENT DEADLINES

The Division of Water Rights Prosecution Team requests that the Hearing Team reschedule the hearing date and the exhibit and witness statement deadlines in the Draft Cease and Desist Order (CDO) against West Side Irrigation District (WSID) such that the exhibit and witness statement deadlines align with the same deadlines in the Administrative Civil Liability Complaint (ACLC) against Byron-Bethany Irrigation District (BBID). The BBID ACLC parties must submit their exhibits and written testimony by January 18, 2016, and their rebuttal exhibits and written testimony by February 22, 2016. The BBID ACLC hearing will commence on March 21, 2016.

The WSID CDO and BBID ACLC enforcement matters share essentially identical party and counsel lists, and both matters involve allegations of actual or threatened diversions of water during periods in which State Water Board staff had determined that no water was available to serve particular water right classifications. It is clear from party submittals and communications to date that most of the focus by most or all of the parties in both matters will be on the staff determinations and accompanying Unavailability Notices. It appears that only WSID is particularly concerned with the other elements of the CDO, likewise, only BBID appears to be concerned with the other elements of the ACLC. BBID and WSID are party to both matters, and appear to be focused on the staff determinations and Unavailability Notices in each as well.

Given the overlap of parties and issues, staggered exhibit and witness statement deadlines present a number of problems. First, several parties are eager to conduct detailed pre-submittal discovery (see the Prosecution Team's October 15 Motion for Protective Orders), and those parties or others may seek post-submittal discovery in each matter. It would be a significant burden on the Prosecution Team witnesses and others to have to sit through multiple rounds of discovery while preparing staggered exhibits and witness statements in each matter.

Second, parties who intend to brief and argue the water availability determinations would bear a significant extra burden in preparing, reviewing and rebutting staggered exhibits and witness statements for each matter. Moreover, staggered exhibit and witness statement deadlines may create administrative record problems. Parties might inadvertently fail to submit one or more exhibits in both cases, or they may seek a second bite at the apple by attempting to augment

the record in the later proceeding in ways that they could have anticipated in the first. Aligned exhibit and witness statement deadlines would allow the water availability determination records to be identical, which would help result in consistent Board decisions on that issue, and would simplify the administrative record should any party appeal the Board decisions to the California Water Curtailment Cases (Sup. Ct. Santa Clara Case #1-15-CV-285182).

The Prosecution Team remains deeply concerned with having timely hearing on proposed injunctive orders such as the WSID CDO. The WSID CDO raises multiple issues that may recur should the drought continue into 2016, or in future droughts. However, using last winter as a guide, the Unavailability Notices regarding post-1914 water rights in the Sacramento Watershed and the Delta (including WSID's License 1381), will likely end soon as winter rains commence. Even if the drought continues, the conditions triggering Unavailability Notices would not likely recur until later in the spring, after the CDO hearing.

The Prosecution Team respectfully suggests that, on balance, any urgency to bring the WSID CDO to hearing in November or January is outweighed by the need to maintain order in developing the record regarding water availability determinations. The best course to maintain such order would be to align the exhibit and witness statement deadlines in the WSID CDO matter with those in the BBID ACLC matter.

Thank you for your consideration of this request.

Sincerely,

/s/ Original signed by

Andrew Tauriainen
OFFICE OF ENFORCEMENT
Attorney for Prosecution Team

cc: WSID CDO Service List

**SERVICE LIST OF PARTICIPANTS
WEST SIDE IRRIGATION DISTRICT
CEASE AND DESIST ORDER HEARING
(October 8, 2015)**

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