
State Water Resources Control Board

October 21, 2015

VIA ELECTRONIC MAIL

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

Dear WSID Hearing Officer Spivy-Weber and BBID Hearing Officer Doduc:

WSID DRAFT CDO HEARING; BBID ACL HEARING – PROSECUTION TEAM’S RESPONSE TO DELTA PARTIES’ DEPOSITION AND DOCUMENT REQUESTS

The Delta Parties (BBID, WSID, SDWA, CDWA) served a number of coordinated deposition notices and document requests after the Prosecution Team prepared its October 15, 2015, Motion for Protective Orders. In response, the Prosecution Team stands by its Motion as consistent with State Water Board precedent recently upheld in the *Millview* appellate court decision. However, should either Hearing Officer be inclined to allow depositions before exhibit and witness statement deadlines, the Prosecution Team requests that each Hearing Officer issue a protective order under authority cited in the motion, with the following conditions.

- 1. Document Requests.** Deposition subpoenas and document requests on Prosecution Team witnesses should not require documents beyond those disclosed prior to the deposition. The Prosecution Team has already disclosed essentially all relevant technical documents, and is reviewing the remaining email records within its separation of functions. The recent discovery disputes created a significant burden on the Prosecution Team, slowing the review. The Delta Parties’ noticed depositions would also create a significant burden and likely slow the review, but the Prosecution Team will continue to work diligently to disclose all remaining documents as soon as possible. Meanwhile, parties seeking depositions prior to the remaining disclosures should rely only on documents disclosed prior to any deposition.
- 2. Witness Statements and Exhibits.** Deposition subpoenas and document requests on Prosecution Team witnesses should not require disclosure of witness statements or exhibits before the witness statement and exhibit deadlines. Parties need not review the Prosecution Team’s case-in-chief in order to prepare their own cases-in-chief. Parties may prepare their cases-in-chief more than adequately by reviewing the disclosed documents and, if allowed, by deposing witness. By seeking pre-submittal witness statements and exhibits, the Delta Parties make clear that they want extra time to prepare rebuttal and cross-examination. The Hearing Notices provide ample time to review witness statements and exhibits, and to prepare rebuttal and cross-examination, thus satisfying due process requirements and ensuring efficient hearing. Parties seeking depositions prior to witness statement and exhibit deadlines should rely only on documents disclosed prior to any deposition.

Thank you for considering this request.

Sincerely,

/s/ Original signed by

Andrew Tauriainen
OFFICE OF ENFORCEMENT
Attorney for Prosecution Team

cc: WSID CDO Service List
BBID ACL Service List

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

<p>Division of Water Rights Prosecution Team Andrew Tauriainen, Attorney III SWRCB Office of Enforcement 1001 I Street, 16th Floor Sacramento, CA 95814 andrew.tauriainen@waterboards.ca.gov</p>	<p>West Side Irrigation District Jeanne M. Zolezzi Karna Harrigfeld Janelle Krattiger Herum\Crabtree\Suntag 5757 Pacific Ave., Suite 222 Stockton, CA 95207 jzolezzi@herumcrabtree.com kharrigfeld@herumcrabtree.com jkrattiger@herumcrabtree.com</p>
<p>State Water Contractors Stefani Morris, Attorney 1121 L Street, Suite 1050 Sacramento, CA 95814 smorris@swc.org</p>	<p>Westlands Water District Daniel O'Hanlon Rebecca Akroyd Kronick Moskovitz Tiedemann & Girard 400 Capitol Mall, 27th Floor Sacramento, CA 95814 dohanlon@kmtg.com rakroyd@kmtg.com</p> <p>Philip Williams of Westlands Water District pwilliams@westlandswater.org</p>
<p>South Delta Water Agency John Herrick, Esq. 4255 Pacific Ave., Suite 2 Stockton, CA 95207 jherrlaw@aol.com</p>	<p>Central Delta Water Agency Jennifer Spaletta Spaletta Law PC PO Box 2660 Lodi, CA 95241 jennifer@spalettalaw.com</p> <p>Dante Nomellini and Dante Nomellini, Jr. Nomellini, Grilli & McDaniel ngmplcs@pacbell.net dantejr@pacbell.net</p>
<p>City and County of San Francisco Johnathan Knapp Office of the City Attorney 1390 Market Street, Suite 418 San Francisco, CA 94102 jonathan.knapp@sfgov.org</p>	<p>San Joaquin Tributaries Authority Valeri Kincaid O'Laughlin & Paris LLP 2617 K Street, Suite 100 Sacramento, CA 95814 vkincaid@olaughlinparis.com</p>
<p>California Department of Water Resources Robin McGinnis, Attorney PO Box 942836 Sacramento, CA 94236-0001 robin.mcginnis@water.ca.gov</p>	<p>Byron Bethany Irrigation District Daniel Kelly Somach Simmons & Dunn 500 Capitol Mall, Suite 1000, Sacramento, CA 95814 dkelly@somachlaw.com</p>

**SERVICE LIST OF PARTICIPANTS
BYRON-BETHANY IRRIGATION DISTRICT
ADMINISTRATIVE CIVIL LIABILITY HEARING
(09/02/15; Revised 09/10/15; Revised 10/06/16)**

<p>Division of Water Rights Prosecution Team Andrew Tauriainen, Attorney III SWRCB Office of Enforcement 1001 I Street, 16th Floor Sacramento, CA 95814 andrew.tauriainen@waterboards.ca.gov</p>	<p>Byron Bethany Irrigation District Daniel Kelly Somach Simmons & Dunn 500 Capitol Mall, Suite 1000, Sacramento, CA 95814 dkelly@somachlaw.com</p>
<p>Patterson Irrigation District Banta-Carbona Irrigation District The West Side Irrigation District Jeanne M. Zolezzi Herum\Crabtree\Suntag 5757 Pacific Ave., Suite 222 Stockton, CA 95207 jzolezzi@herumcrabtree.com</p>	<p>City and County of San Francisco Johnathan Knapp Office of the City Attorney 1390 Market Street, Suite 418 San Francisco, CA 94102 jonathan.knapp@sfgov.org</p> <p>Robert E. Donlan Ellison, Schneider & Harris LLP 2600 Capitol Ave, Suite 400 Sacramento, CA 95816 (916) 447-2166 red@eslawfirm.com</p>
<p>Central Delta Water Agency Jennifer Spaletta Spaletta Law PC PO Box 2660 Lodi, CA 95241 jennifer@spalettalaw.com</p> <p>Dante Nomellini and Dante Nomellini, Jr. Nomellini, Grilli & McDaniel ngmplcs@pacbell.net dantejr@pacbell.net</p>	<p>California Department of Water Resources Robin McGinnis, Attorney PO Box 942836 Sacramento, CA 94236-0001 robin.mcginis@water.ca.gov</p>
<p>Richard Morat 2821 Berkshire Way Sacramento, CA 95864 rjmorat@gmail.com</p>	<p>San Joaquin Tributaries Authority Valeri Kincaid O'Laughlin & Paris LLP 2617 K Street, Suite 100 Sacramento, CA 95814 vkincaid@olaughlinparis.com</p>
<p>South Delta Water Agency John Herrick, Esq. 4255 Pacific Ave., Suite 2 Stockton, CA 95207 jherrlaw@aol.com</p>	<p>State Water Contractors Stefani Morris, Attorney 1121 L Street, Suite 1050 Sacramento, CA 95814 smorris@swc.org</p>