

CALIFORNIA STATE  
WATER RESOURCES CONTROL BOARD

BYRON BETHANY IRRIGATION DISTRICT  
PRE-HEARING CONFERENCE

Friday, September 25, 2015

Joe Serna Jr.-CalEPA Building  
1001 I Street  
Sacramento, California

9:00 a.m.

Reported by:  
Peter Petty

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APPEARANCES:Board Member

Tam Doduc, Hearing Officer

Staff Hearing Team

Nicole Kuenzi, Staff Counsel

Jane Farwell-Jensen, Environmental  
Scientist

Ernie Mona, Water Resource Engineer

Michael Buckman, Hearing Unit Chief

Division of Water Rights Prosecution Team

Andrew Tauriainen, Office of Enforcement

John Prager, Office of Enforcement

Kathy Mrowka, Manager, Enforcement Section

HEARING PARTIES:Byron-Bethany Irrigation District

Daniel Kelly, Somach Simmons & Dunn

Aaron Ferguson, Somach Simmons & Dunn

Rick Gilmore, General Manager

South Delta Water Agency

John Herrick

Central Delta Water Agency

Jennifer Spaletta

City/County of San Francisco

Jonathan Knapp

Robert Donlan

San Joaquin Tributaries Authority

Valerie Kincaid, O'Laughlin & Paris

Tim Wasiewski, O'Laughlin & Paris

California Department of Water Resources

Robin McGinnis

HEARING PARTIES (Continued):

Patterson Irrigation District  
Banta Carbona Irrigation District  
West Side Irrigation District  
Jeanne Zolezzi, Herum Crabtree Suntag

State Water Contractors  
Stefanie Morris  
Joli-Anne Ansley, Duane Morris LLP

Richard Morat  
Richard Morat

INDEX

	<u>PAGE</u>
PROCEEDINGS	5
ADJOURNMENT	52
REPORTER'S CERTIFICATION	53
TRANSCRIBER'S CERTIFICATION	54

P R O C E E D I N G S

1  
2 SEPTEMBER 25, 2015

9:00 A.M.

3 HEARING OFFICER DODUC: Good morning,  
4 everyone. Welcome to today's pre-hearing conference  
5 regarding the public hearing, which we'll be holding  
6 later on, to receive evidence relevant to  
7 determining whether Byron-Bethany Irrigation  
8 District engaged in unauthorized diversion of water,  
9 and whether to impose administrative civil liability  
10 against BBID for the alleged unauthorized diversion.

11 I am State Water Board Member Tam Doduc,  
12 and present here today are from staff, Nicole  
13 Kuenzi, attorney; Jane Farwell-Jenson, and Ernie  
14 Mona from Division of Water Rights staff.

15 A couple of just housekeeping announcements  
16 to begin with.

17 Please look around and identify the exits  
18 closest to you. In the event of a fire alarm, we  
19 are required to evacuate this room immediately.  
20 Please take your valuables with you and do not use  
21 the elevators. Exit down the stairways and to the  
22 relocation site across the street in the park. If  
23 you cannot use stairs, you will be directed to a  
24 protected vestibule inside the stairwell.

25 Second important announcement of the day is

1 please take a moment right now to turn off or mute  
2 your cell phones. I get very annoyed when it goes  
3 off.

4           Okay. We'll wait for the rest of the  
5 people to come in and grab a seat.

6                           [Pause on the record.]

7           HEARING OFFICER DODUC: All right, moving  
8 on. Let's first talk about the conduct of today's  
9 prehearing conference.

10                   It's being held in accordance with a Notice  
11 of Public Hearing and Prehearing Conference dated  
12 August 19, 2015, and my letters to the parties dated  
13 September 11, 2015.

14                   Our goal today is to ensure that the  
15 hearing proceeds in an orderly and expeditious  
16 manner. I am particularly interested in hearing  
17 from all of you regarding procedural matters that  
18 will further this goal.

19                   As you can probably notice by now, the  
20 prehearing -- well, you may not know that the  
21 prehearing is being webcast on the Internet, and  
22 both the audio and video are being recorded.

23                   A court reporter is present here today.  
24 The transcript will be available on the State Water  
25 Board's BBID ACL Hearing website, or you may make

1 arrangements with the court reporting service.

2 With that, let's begin with the roll call.  
3 As I identify each party who has filed a Notice of  
4 Intent to Appear, please speak into the microphone  
5 and identify your name.

6 First, Byron-Bethany Irrigation District.

7 MR. KELLY: Good morning, Board Member  
8 Doduc. My name is Daniel Kelly, I'm with the law  
9 firm of Somach Simmons & Dunn here in Sacramento.  
10 We are general counsel for the Byron-Bethany  
11 Irrigation District.

12 To my right is Rick Gilmore. He is the  
13 General Manager of the Byron-Bethany Irrigation  
14 District.

15 HEARING OFFICER DODUC: No association  
16 meeting today, huh?

17 MR. GILMORE: Pardon?

18 HEARING OFFICER DODUC: No association  
19 meeting today, huh?

20 MR. KELLY: The association meeting --

21 HEARING OFFICER DODUC: I know.

22 MR. KELLY: -- is in late October during  
23 the public hearing.

24 Mr. Gilmore was unavailable for today's  
25 meeting, but given that this is proceeding in kind

1 of a very quick manner, Mr. Gilmore decided to  
2 cancel the plans he had today to convey that he  
3 believes that this is very important, and so he  
4 cancelled his plans in order to be here.

5 HEARING OFFICER DODUC: Appreciate it.

6 MR. KELLY: To his right is Aaron Ferguson,  
7 he's with Somach Simmons & Dunn as well, one of my  
8 associates.

9 HEARING OFFICER DODUC: Thank you,  
10 Mr. Kelly.

11 The Division of Water Rights prosecution  
12 team.

13 MR. TAURIAINEN: Thank you, Board Member  
14 Doduc. I'm Andrew Tauriainen with the Office of  
15 Enforcement, attorney for the prosecution team.

16 To my right is my colleague at the Office  
17 of Enforcement, John Prager.

18 To my left is Kathy Mrowka of the Division  
19 Enforcement Unit.

20 HEARING OFFICER DODUC: Thank you.  
21 South Delta Water Agency.

22 MR. HERRICK: Good morning. John Herrick  
23 for South Delta Water Agency.

24 HEARING OFFICER DODUC: Thank you,  
25 Mr. Herrick.



1 Central Delta Water Agency.

2 MS. SPALETTA: Good morning. Jennifer  
3 Spaletta for Central Delta Water Agency.

4 HEARING OFFICER DODUC: Thank you,  
5 Ms. Spaletta.

6 City and County of San Francisco.

7 MR. KNAPP: Good morning. Jonathan Knapp  
8 for the City and County of San Francisco. And I'm  
9 here with Robert Donlan, outside counsel for the  
10 City and County of San Francisco.

11 HEARING OFFICER DODUC: Thank you,  
12 Mr. Knapp.

13 The San Joaquin Tributaries Authority.

14 MS. KINCAID: Valerie Kincaid from the San  
15 Joaquin Tributaries Authority. Here with...

16 MR. WASIEWSKI: Tim Wasiewski, same  
17 parties.

18 HEARING OFFICER DODUC: Thank you,  
19 Ms. Kincaid.

20 California Department of Water Resources.

21 MS. MCGINNIS: Robin McGinnis.

22 HEARING OFFICER DODUC: Would you mind  
23 coming up and speaking into the microphone.

24 MS. MCGINNIS: There we go. Robin  
25 McGinnis, attorney, California Department of Water

1 Resources.

2 HEARING OFFICER DODUC: Thank you.

3 Patterson Irrigation District.

4 MS. ZOLEZZI: Jeanne Zolezzi, Herum  
5 Crabtree Suntag, general counsel for Patterson.

6 HEARING OFFICER DODUC: Would you like to  
7 identify yourself for Banta Carbona and West Side,  
8 as well?

9 MS. ZOLEZZI: Yes, general counsel --

10 HEARING OFFICER DODUC: Efficiency.

11 MS. ZOLEZZI: -- for those two districts,  
12 as well. Thank you.

13 HEARING OFFICER DODUC: Thank you very  
14 much, Ms. Zolezzi.

15 Have I identified everyone?

16 Ah, Mr. Morat. Sorry I missed you.  
17 There's a microphone up there and a table up there.

18 MS. MORRIS: Also, Stefanie Morris, general  
19 counsel for the State Water Contractors; we're a  
20 party.

21 HEARING OFFICER DODUC: Okay, hold on a  
22 second. This is why I don't like this, because  
23 everyone start talking and I don't know who's who.

24 Mr. Morat, please identify yourself.

25 MR. MORAT: Good morning. I'm Richard

1 Morat, representing myself.

2 HEARING OFFICER DODUC: Thank you.

3 And oh, actually, I skipped number eight  
4 and nine, and I apologize.

5 State Water Contractors.

6 MS. MORRIS: Stefanie Morris, general  
7 counsel for the State Water Contractors. And Joli  
8 Ansley, outside counsel for the State Water  
9 Contractors.

10 HEARING OFFICER DODUC: Thank you. You  
11 were on my cheat sheet; I just need more coffee.

12 All right. With that, I'm assuming that I  
13 now have read everyone? All right.

14 Let's jump into our first topic of the day,  
15 which is regarding requests for hearing delay.

16 As set forth in the August 19th, 2015  
17 notice, the hearing in this matter is scheduled for  
18 October 28th, and continuing, if necessary, on  
19 October 29th and 30th of 2015.

20 BBID, Central Delta Water Agency, and South  
21 Delta Water Agency have requested that the hearing  
22 be postponed.

23 I have considered your comments and I'm  
24 inclined to postpone the hearing approximately four  
25 weeks and reschedule the hearing in December.

1           So I am directing the parties to submit  
2 their availability for the month of December and for  
3 the month of January in the event we are unable to  
4 indentify enough hearing days in December. I want  
5 your submittals of these availability by noon on  
6 Wednesday, September 30th. That's next Wednesday.

7           And I will also revise the deadline for  
8 submission of exhibits and written testimony based  
9 on the revised hearing date.

10           I'm sure you're all very happy with that,  
11 but since I see that Mr. Kelly is already reaching  
12 for his microphone, does anyone have any comments on  
13 what I've just said?

14           MR. KELLY: Board Member Doduc, Dan Kelly  
15 for Byron-Bethany Irrigation District.

16           HEARING OFFICER DODUC: Could you get  
17 closer to the microphone, please.

18           MR. KELLY: I absolutely can. Is this  
19 better?

20           HEARING OFFICER DODUC: That's much better.

21           MR. KELLY: I appreciate the hearing team's  
22 consideration of the request for delay, and there's  
23 quite a bit that's transpired between the time that  
24 I made that request in September and today, and  
25 actually, more importantly, since yesterday.

1           And throughout the time that this process  
2 has been kind of going in a parallel track to a  
3 litigation that's going on -- which is now in Santa  
4 Clara Superior Court, which I understand  
5 Mr. Tauriainen circulated the Court's order that was  
6 issued yesterday -- the State Water Board has gone  
7 into court and has informed the Court, not only the  
8 Sacramento Superior Court but the Alameda County  
9 Superior Court and now the Santa Clara Superior  
10 Court, that both Byron-Bethany Irrigation District  
11 and the West Side Irrigation District are going to  
12 be provided with a full opportunity to air all of  
13 the issues that it raised in the litigation first  
14 here so that this Board can consider those before it  
15 goes back to the court.

16           We didn't anticipate all of those issues  
17 being aired here, but it was the State Water Board's  
18 representations to the Court that that was going to  
19 happen here that I think in part resulted in the  
20 Court denying a staying of these proceedings.

21           And so the State Water Board's attorneys  
22 expressly mentioned BBID's allegations of the lack  
23 of due process and an unfair hearing and lack of  
24 separation as being matters that this body is now  
25 going to consider. And so not only now do I need

1 time to prepare for an evidentiary hearing, what I  
2 believe is a pretty significant evidentiary hearing,  
3 but I need time to file those motions and have this  
4 body decide them before we move forward.

5 I had not intended on bringing all of those  
6 issues to this body, but based on your attorney's  
7 representations to the Court, I've got to do that  
8 now or I have a potential exhaustion problem when  
9 this proceeding is over. I can't do that by  
10 December. I certainly can't do that by January.

11 My request to delay until May was simply to  
12 prepare and proceed for an evidentiary hearing.  
13 This has gotten much bigger. And so I can probably  
14 get it all done, still, by late Spring of next year,  
15 but that is not all going to happen by December.

16 And so I'm going to ask that you reconsider  
17 based on those additional facts and new  
18 circumstances that the parties here be provided a  
19 little bit more time to have the opportunity to  
20 raise those issues to you, to have you rule on them,  
21 and then to have an evidentiary hearing.

22 HEARING OFFICER DODUC: Thank you. Your  
23 concerns are noted and thank you for voicing them so  
24 succinctly.

25 Anyone else wish to comment on the issue of

1 delay?

2 MR. TAURIAINEN: Yes, Andrew Tauriainen for  
3 the prosecution team.

4 HEARING OFFICER DODUC: And again, I'll ask  
5 you to get closer to the microphone.

6 MR. TAURIAINEN: Okay

7 HEARING OFFICER DODUC: If I'm having  
8 trouble hearing you, then others are, too.

9 MR. TAURIAINEN: Thank you. My apologies.  
10 Prosecution team understands Byron-

11 Bethany's concerns, and West Side's concerns, as  
12 well. Both Byron-Bethany and West Side moved the  
13 Santa Clara Superior Court to stay the enforcement  
14 proceedings, these enforcement proceedings, both  
15 Byron-Bethany's ACL complaint and the West Side CDO  
16 that's trailing this proceeding that we're here for  
17 today. And we understand that those parties have  
18 chosen to dedicate significant resources toward the  
19 litigation, in particular the motions to stay, over  
20 the last couple weeks.

21 But yesterday the Court denied those  
22 motions to stay so that the Board could undertake  
23 the enforcement proceeding, the enforcement  
24 proceeding that's framed by the complaint and by the  
25 hearing notice and by your letters of the last

1 couple weeks.

2 I don't see that the complaint or the  
3 hearing notice frame any of the broad issues raised  
4 in the litigation by any of the parties in the  
5 coordinated litigation.

6 The complaint is fairly narrowly framed to  
7 whether or not there was a violation during a  
8 specific time period in June, and those issues are  
9 reflected in the hearing notice and in your letters  
10 since.

11 So I don't see that the parties will need,  
12 nor do I think the Court directed the parties to  
13 brief or adjudicate any of the broader litigation  
14 issues in this enforcement proceeding or in the West  
15 Side CDO enforcement proceeding.

16 And just for a point of clarification, the  
17 State Board has --

18 HEARING OFFICER DODUC: Could you -- I'm  
19 sorry, let me, let me just say, I obviously have  
20 your point of views in writing, both of yours, and I  
21 would ask that, rather than repeating what you've  
22 already submitted in writing, are there any  
23 additional arguments you would like to make or  
24 additional information you would like me to have in  
25 considering the delay?



1 MR. TAURIAINEN: Just the last --

2 HEARING OFFICER DODUC: Especially based on  
3 what Mr. Kelly has just said, which I appreciated  
4 because he focused on things that were not already  
5 submitted in his written letters.

6 MR. TAURIAINEN: Right. I hadn't addressed  
7 the Court's decision in any of my writings --

8 HEARING OFFICER DODUC: Okay.

9 MR. TAURIAINEN: -- except for the email  
10 that I forwarded the Court's order yesterday.

11 The last point is, in the litigation the  
12 State Board is represented by the Attorney General's  
13 Office and the Office of Chief Counsel. There's a  
14 separation of functions in place such that the  
15 prosecution team and the Enforcement Unit really  
16 didn't participate and isn't participating in the  
17 litigation.

18 I don't -- I wasn't present at the hearing,  
19 I don't know what they have said in the litigation  
20 about what the scope of this enforcement proceeding  
21 should be, but that's clear from the complaint and  
22 from the hearing notice what the scope of this  
23 enforcement proceeding should be.

24 HEARING OFFICER DODUC: Thank you.

25 Anyone else wish to weigh in with new

1 arguments or information? Ms. Spaletta.

2 MS. SPALETTA: Thank you. Jennifer  
3 Spaletta on behalf of Central Delta Water Agency.

4 I would concur with Mr. Kelly that a  
5 continuance until at least May would be appropriate  
6 for the following reasons.

7 The first issue raised for the hearing is  
8 whether there was an unlawful diversion. In order  
9 to decide that issue, you first have to determine  
10 whether there was water available to divert under  
11 the particular water right.

12 That analysis has two components, the first  
13 being the method used to determine --

14 HEARING OFFICER DODUC: We're not arguing  
15 that today, Ms. Spaletta.

16 MS. SPALETTA: No, but --

17 HEARING OFFICER DODUC: I'm, again, asking  
18 the parties to provide me with any additional  
19 information that I need in order to make the  
20 decision on a delay.

21 MS. SPALETTA: This is additional  
22 information.

23 HEARING OFFICER DODUC: All right.

24 MS. SPALETTA: The two components are the  
25 method used, and the second component is the factual

1 information plugged into the method.

2 I think that the factual information is  
3 going to be pretty easy and won't take that much  
4 time. It's the method part that's going to require  
5 the extensive discovery, the depositions, the other  
6 parties to have experts.

7 If we were in a trial court and we had what  
8 was considered a non-complex case, the court would  
9 set it out one year. If we had any experts in the  
10 case, the court would deem it complex and would give  
11 the parties at least two years to bring the matter  
12 to hearing.

13 So the concept of having this case that  
14 involves expert testimony on an issue that has never  
15 been decided by the State Board or a court of law,  
16 it's an issue of first impression both factually and  
17 legally, decided in less than three months would be  
18 a violation of due process under even the fastest  
19 fast track rules in the judicial system.

20 So that's why we're asking for this  
21 continuance. In order to have the number of  
22 depositions, and, frankly, the sharing of  
23 information that's required to reach factual  
24 stipulations and distill information into a three-  
25 to four- to five-day hearing, you need more time to

1 do that. If we were to keep this schedule, I can  
2 pretty much guarantee you you're going to have a  
3 three-week hearing.

4 HEARING OFFICER DODUC: Thank you.

5 MS. SPALETTA: So that's a problem.

6 HEARING OFFICER DODUC: Anyone else?

7 MR. HERRICK: Thank you. John Herrick for  
8 South Delta Water Agency. I'll just echo Mr. Kelly  
9 and Ms. Spaletta's comments, and end with we now  
10 have fundamental Delta hydrodynamic issues before  
11 the Board, and these are not simple, as has been  
12 represented. These are extremely complex, and it  
13 will take a significant amount of time to prepare  
14 for and then argue this and have a hearing.

15 This is not a small deal. I know the Board  
16 wanted to, you know, have some of these issues  
17 decided quickly or, you know, narrowly tailor them,  
18 but we're not at that point now. These are  
19 fundamental overriding aspects of the Delta, which I  
20 won't be able to prepare a good case in another 45  
21 days. Thank you.

22 HEARING OFFICER DODUC: Thank you,  
23 Mr. Herrick.

24 Anyone else before I give Mr. Kelly the  
25 last chance of remarks? Yes.

1 MR. KNAPP: Jonathan Knapp for the City and  
2 County of San Francisco. As stated in our letter,  
3 San Francisco supports the extension to at least May  
4 of 2016.

5 The one additional point that I'd like to  
6 make here is that it occurs to us that in a case of  
7 this type, that we very much see as a complex  
8 matter, that it would make sense to phase the -- to  
9 phase the adjudication of this proceeding so that  
10 the threshold legal issues could be addressed before  
11 you get into what we see as very complex factual  
12 issues.

13 And to Mr. Tauriainen's point, the  
14 underlying premise of the ACL is that the Board can  
15 exercise its jurisdiction against a pre-1914 water  
16 right holder in the way that it has.

17 San Francisco doesn't believe that's the  
18 case and believes there is a threshold legal issue  
19 presented with respect to the scope of the Board's  
20 jurisdiction, and that there would be additional  
21 threshold legal issues that would be appropriately  
22 addressed prior to moving into factual evidentiary  
23 hearings.

24 HEARING OFFICER DODUC: Thank you,  
25 Mr. Knapp.

1 All right. With that, I'll turn back to  
2 Mr. Kelly for his final comments on this matter, at  
3 least for now.

4 MR. KELLY: Yeah. Thank you, Hearing  
5 Officer Doduc. A couple of more additional points.

6 I agree. You know, there's discovery  
7 that's got to happen and, you know, we've got to  
8 deal with peoples' schedules and availability, and I  
9 get that.

10 I'm sure we're going to talk at some point  
11 about BBID's Notice of Intent to Appear. I'm fully  
12 prepared to discuss that and disclose names today,  
13 but I've got a practical problem with that, too.

14 And as I expressed in my letter, my Notice  
15 of Intent to Appear, you know, we got the hearing  
16 notice on the 19th and we got the -- we had to file  
17 the Notice of Intent to Appear by the 2nd, and BBID  
18 diligently went out there to find experts in  
19 modeling and all that other stuff.

20 Well, one of the modelers, one of the  
21 experts that I'm going to be using is Bob Wagner  
22 with the firm of Wagner Bonsignore. Now,  
23 unfortunately, I guess, for BBID, Mr. Bonsignore  
24 [sic] had a preplanned family vacation to Europe.  
25 He left on September the 11th and he's still in

1 Europe, and he doesn't get back until October the  
2 15th.

3 I've had no contact with Mr. Wagner since  
4 he's been gone, so I've not been able to discuss his  
5 testimony with him or do any of that other stuff.

6 And so I was hoping to have until October  
7 the 15th and to consult with Mr. Wagner on the scope  
8 of his testimony so I could make sure I didn't have  
9 to have somebody else testify, or if Mr. Wagner  
10 could cover more than I anticipated, but I haven't  
11 had the opportunity to do that.

12 I know that it's not the Board's fault or  
13 the Board's problem, but it's just a practical  
14 problem that I've got.

15 And I could get you his declaration when he  
16 gets back that he was on a preplanned family  
17 vacation; that's -- I could do that. And so that's  
18 just a real practical problem I've got.

19 And so, you know, I don't want you to think  
20 that we're trying to delay this for delay's sake.  
21 There are real significant issues here. We've got  
22 very real procedural issues that we're dealing with.  
23 We've got to find experts to --

24 HEARING OFFICER DODUC: Yes, I am aware of  
25 that.

1 MR. KELLY: -- really analyze this stuff.  
2 We've got to have experts analyze what the  
3 prosecution team has done. I've got to have experts  
4 analyze what the Board's staff has done.

5 And so I'll -- you know, you saw our letter  
6 as it relates to the Public Records Act request, and  
7 just so I can make a record here, I made a Public  
8 Records Act request to this Board. I made it to the  
9 Delta Water Master and I sent one to the prosecution  
10 team on July the 21st, the day after the ACL was  
11 issued.

12 HEARING OFFICER DODUC: Thank you. I am  
13 aware of that.

14 MR. KELLY: Well, I just, I need to say  
15 that --

16 HEARING OFFICER DODUC: It's already in the  
17 court record based on written materials that you've  
18 provided, so I want you to wrap up on this issue and  
19 let's move on.

20 MR. KELLY: I just, I will wrap up on this  
21 issue. That I still haven't received anything, and  
22 it's stuff that my experts need to analyze in order  
23 to prepare for the case.

24 HEARING OFFICER DODUC: I understand.

25 MR. KELLY: And we're prejudiced by not



1 having it provided.

2 HEARING OFFICER DODUC: That's one of the  
3 reasons I asked for an update in my September 11th  
4 letter. I really appreciate your position on that.

5 MR. KELLY: Thank you.

6 HEARING OFFICER DODUC: All right. I think  
7 you all have given me more to think about with  
8 respect to that issue.

9 So let's move on to the second issue, and  
10 that is the stipulations.

11 I had asked in my September 11th letter for  
12 the prosecution team and BBID to meet and confer  
13 regarding stipulation of materials that are not in  
14 dispute, and to date I believe that you have not  
15 been able to reach agreement and I understand that  
16 there's been some exchanges of correspondence  
17 anyway.

18 I expect that in delaying this hearing  
19 date, I expect the parties to continue to have your  
20 discussions regarding the possibility of factual or  
21 legal stipulation in order to streamline the hearing  
22 process.

23 Anyone who would like to comment on the  
24 issue of stipulations? Ms. Spaletta.

25 MS. SPALETTA: Thank you. Again, I just

1 want to explain what the process would be if we were  
2 in a normal trial court proceeding.

3           You would have discovery, and then once --  
4           HEARING OFFICER DODUC: Ms. Spaletta, I  
5 appreciate that I, not being an attorney, that you  
6 are much more versed than I am in the process of a  
7 typical court case or court proceeding.

8           Keep in mind that this is a water rights  
9 proceeding before the State Water Board and there  
10 are nuances and there are differences in various  
11 processes.

12           So while I appreciate the experience that  
13 you are sharing with all of us, I would ask you  
14 again to please keep in mind that this is a  
15 different, though we will obviously endeavor to make  
16 sure that it is as fair, as inclusive, and as  
17 thorough as possible in order to render an  
18 appropriate decision.

19           But keep that in mind that we are not bound  
20 by the strict processes and procedures that you are  
21 used to in a regular court proceeding. And I maybe  
22 shouldn't say that as being an engineer on the  
23 Board, but that certainly is my understanding.

24           MS. SPALETTA: This actually doesn't go to  
25 the court rules so much as the reason for the order

1 of things.

2 I think that stipulations are excellent and  
3 should be encouraged, and certainly help streamline  
4 the hearing and improve communication among the  
5 parties and the Board. The difficulty is, until  
6 you've conducted discovery, you don't know what's on  
7 the table to stipulate to.

8 And so I would just request that to the  
9 extent we encourage stipulations, that we make sure  
10 that they are requested after the time for  
11 appropriate discovery has occurred.

12 HEARING OFFICER DODUC: That's fair enough.  
13 Thank you.

14 Anyone else have anything relevant to add  
15 on the issue of stipulation?

16 Again, I will encourage BBID and the  
17 prosecution team to make your best effort in  
18 reaching some of those stipulations.

19 All right. This one will take a while.  
20 The next topic is on the groupings of parties.

21 Again, in the interest of ensuring an  
22 efficient hearing process, I would like to discuss  
23 possible groupings of parties whose interests in the  
24 matter are similar, and encourage you to coordinate  
25 your direct and cross-examination.

1           With the exception of the prosecution team  
2 and BBID, I would like the parties to form two  
3 groups for the purpose of direct and cross-  
4 examination, and I would expect the parties in each  
5 group to coordinate their testimony and select a  
6 cross-examiner.

7           I know you guys are all thrilled by that  
8 concept, so let's begin with a discussion.

9           It looks, from at least the NOIs that I've  
10 received, there may be parties that have similar  
11 interests.

12           For example, Central Delta Water Agency,  
13 South Delta Water Agency, City and County of San  
14 Francisco, San Joaquin Tributaries Authority,  
15 Patterson Irrigation District, Banta-Carbona, and  
16 West Side. Are there any reason why these entities  
17 could not form a grouping for the purpose of sharing  
18 information, coordinating testimony, and cross-  
19 examination?

20           Let me first hear from -- let me first hear  
21 from Ms. Zolezzi since she has not spoken yet.

22           MS. ZOLEZZI: Yes, Hearing Officer Doduc.  
23 I find the attempt to lump parties of such varied  
24 interests together a serious potential violation of  
25 due process. These parties have very disparate

1 interests. While tiny areas may overlap of what  
2 they may be trying to prove in this hearing process,  
3 you are talking about parties who have historically  
4 been antagonistic and sued one another on the very  
5 issues that are before this hearing.

6 I am not saying that we will not attempt to  
7 coordinate; we certainly will. We'll meet  
8 regularly. We will try to share the same experts.  
9 We will try to coordinate on cross-examination.

10 What I'm trying to avoid is being bound by  
11 my parties having to designate one person who does  
12 not have my interests in their interests. We have  
13 to be able to ask different questions by different  
14 parties.

15 So perhaps we could be willing to attempt  
16 to designate someone to work on those issues that  
17 overlap, but then we must be allowed to have our own  
18 questions to the extent that they were not covered  
19 and we have additional.

20 So it's not that we're not trying to be  
21 cooperative; we truly are. But it cannot be a hard  
22 and fast rule so that we cannot have our opportunity  
23 to ask individualized questions for those parties.

24 HEARING OFFICER DODUC: Thank you. That  
25 was very helpful.

1 Ms. Spaletta.

2 MS. SPALETTA: I would have said almost the  
3 same thing, so I'm not going to repeat it, but there  
4 will be someone who takes a lead on cross-  
5 examination and asks most of the questions. I'm  
6 confident that that's how it will happen. It's in  
7 all the parties' best interests for it to happen  
8 like that, but each party does need to retain the  
9 right to be able to ask questions on cross-  
10 examination through their own attorney, not someone  
11 else's attorney.

12 HEARING OFFICER DODUC: Mr. Herrick?

13 MR. HERRICK: I'll just echo what was just  
14 said. It is important to note that the Tributary  
15 agency and San Francisco, no offense to them, but  
16 have consistently been on the opposite side of  
17 various issues, including some of the issues here,  
18 since I've been doing this, so I would not want to  
19 be aligned with them.

20 We will certainly coordinate with other  
21 parties as best we can, but I don't want to give up  
22 the opportunity to ask questions if they haven't  
23 been asked.

24 HEARING OFFICER DODUC: Mr. Knapp and  
25 Ms. Kincaid, since I also mentioned your parties,

1 would you like to comment?

2 MS. KINCAID: I think that's right, and I  
3 agree with what's been said. Just a small addition  
4 that, as we get through the discovery process, those  
5 alignments and disparities will be even more clear.  
6 As we prepare expert testimony and as we depose the  
7 State Water Board on certain issues, certainly the  
8 historic commonalities and differences will arise.

9 And as the other parties have said, we'll  
10 do our best to coordinate where there's consistency,  
11 but Mr. Herrick is correct, there's going to  
12 continue to be issues where we just simply, you  
13 know, look at the world from a different lens, and  
14 that will continue in this proceeding, I have no  
15 doubt. Thank you.

16 HEARING OFFICER DODUC: Mr. Knapp, don't  
17 feel obligated to speak if you don't want to.

18 MR. KNAPP: All I was going to say is I  
19 have nothing to add to what Ms. Kincaid just said.  
20 Thank you.

21 HEARING OFFICER DODUC: Thank you.

22 And thank you for that suggestion,  
23 Ms. Zolezzi. I will consider it very carefully.

24 Before moving on, then, I know that  
25 Mr. Kelly wanted to speak on this suggested

1 grouping, so I will allow him, and the prosecution  
2 team if they want to, a very, very short timeframe  
3 to comment.

4 MR. KELLY: Thank you, Hearing Officer  
5 Doduc.

6 I understand the desire to group parties  
7 together, but to be frank, I don't know that I agree  
8 with the alignments, and I don't know that I'm going  
9 to have an adequate opportunity to cross-examine  
10 individual people if I'm going to get conflicting  
11 answers from people on an individual panel. But I  
12 don't know yet; I don't know where all these parties  
13 fall on all the issues.

14 And to be completely frank, there are  
15 conversations I'm going to have with people that are  
16 not perceived to be aligned with me about areas of  
17 agreement. And you know, again, I want to have the  
18 opportunity to have those conversations with people.  
19 But if there are agreements I have with people who  
20 are not aligned with me, or thought to be aligned  
21 with me, and there are disagreements I have with  
22 folks that are thought to be aligned with me, that  
23 presents a problem for me in doing effective cross-  
24 examination.

25 And so I just want to be able to make sure



1 that I've got the ability to conduct an appropriate  
2 cross-examination of any individual witness, that's  
3 all.

4 HEARING OFFICER DODUC: Thank you. Okay,  
5 help me say your last name.

6 MR. TAURIAINEN: Tauriainen.

7 HEARING OFFICER DODUC: Okay,  
8 Mr. Prosecution Team.

9 MR. TAURIAINEN: Thank you. I think that,  
10 as I understand it, the hearing notice, the grouping  
11 of aligned parties is simply for the economy of the  
12 proceedings in order to have, you know, set  
13 reasonable limits on the amount of cross-examination  
14 and rebuttal.

15 HEARING OFFICER DODUC: Yes, I do know why  
16 I suggested it, yes, so let's move on.

17 MR. TAURIAINEN: Yeah. It would seem,  
18 then, that the appropriate discussion would be  
19 really how much time should all the parties have in  
20 the grouped parties.

21 And I do -- the prosecution team does agree  
22 with your groupings. Based on the Notices of Intent  
23 to Appear, it appears that there are two groups  
24 beyond prosecution and Byron-Bethany.

25 And other than the common witness that's

1 been named by Byron-Bethany and then one of the  
2 other aligned parties, the prosecution even notes  
3 that, you know, Byron-Bethany and the prosecution  
4 get their own time limits for their cases and cross-  
5 exam and rebuttal. So that's all.

6 HEARING OFFICER DODUC: Thank you. And I  
7 see your hand but I'm getting to you next, because  
8 my second suggested grouping is for the State Water  
9 Contractors and the Department of Water Resources to  
10 coordinate. So with that, Ms. Morris, right?

11 MS. MORRIS: Correct, thank you. I'm all  
12 for efficiency; that's a great idea, we need to do  
13 that. Unfortunately, I agree -- well, not  
14 unfortunately. I agree with the statements made  
15 earlier.

16 And we can't rely on the Department of  
17 Water Resources. They don't represent us. They a  
18 lot of times have a different interest than we do.  
19 In fact, they have a contract with BBID that we're  
20 not a party to.

21 And so our interests are not entirely  
22 aligned, and while we would coordinate with them and  
23 do our best to be efficient in terms of cross-  
24 examination, we would need to reserve the right to  
25 cross-examine on our own.

1 HEARING OFFICER DODUC: All right.

2 Department of Water Resources, do you wish to  
3 comment, Ms. McGinnis?

4 MS. MCGINNIS: Thank you, Board Member  
5 Doduc. I pretty much agree with what everyone has  
6 said.

7 HEARING OFFICER DODUC: All the parties  
8 agree, good.

9 MS. MCGINNIS: It's good. Some  
10 coordination will likely be possible, but we  
11 probably want to put on our own case in chief and  
12 maybe we can coordinate on cross-examination.

13 HEARING OFFICER DODUC: All right, thank  
14 you. I appreciate the concerns you've raised, and I  
15 will certainly take it under advisement.

16 I will warn you that if it's not possible  
17 for the parties to agree to some groupings, I will  
18 have to modify the time limits accordingly, so I  
19 will take all of this under advisement for now.

20 So with that, let's go ahead and move on to  
21 the issue of time limits.

22 Mr. Morat. You know, actually, I'm going  
23 to ask you to move up to that table because  
24 otherwise I keep forgetting you.

25 Would you like to form a party grouping of

1 one, or do you have any --

2 MR. MORAT: Board Member Doduc, I would  
3 love to have more than one, but I'd be willing to  
4 group if there's other parties addressing the  
5 subject matter I noticed to testify to.

6 HEARING OFFICER DODUC: I'm sorry, I didn't  
7 quite catch that.

8 MR. MORAT: Yes, I'll be a party, a  
9 grouping of one.

10 HEARING OFFICER DODUC: Well, if you feel  
11 so inclined to join in any of the groups, I'm sure  
12 they will be open to discussing it with you. But I  
13 wanted to also acknowledge that you are a party and  
14 I should have requested your comments, as well.

15 MR. MORAT: Thank you.

16 HEARING OFFICER DODUC: So I'm glad you're  
17 up there now.

18 All right, time limits.

19 As you know, the attachment to the  
20 August 19th hearing notice have time limits  
21 specified, and as stated in my letter of  
22 September 11th, I am going to adhere to those time  
23 limits.

24 But I will consider requests to vary from  
25 these time limits if they are submitted in writing

1 with an offer of proof as to the substance, purpose,  
2 and relevancy of the expected testimony, and any  
3 reason why the testimony could not be adequately  
4 submitted by the submission deadline.

5 I will also caution you, as you've already  
6 guessed from today, that even with the time limits  
7 imposed, I will move things along if I feel  
8 testimony is stagnating with irrelevant or  
9 inefficient questioning or testimony.

10 At this point, I already have glanced  
11 through some of the NOIs that you submitted to take  
12 a look at the time requests that you've made, and I  
13 will continue to take that into consideration. But  
14 at this time are there any comments that you want to  
15 further provide with respect to requests for time  
16 limit variances?

17 And I will begin with Mr. Kelly.

18 MR. KELLY: I don't -- it's hard to comment  
19 without seeing what the scope of everyone's  
20 testimony is going to be, and until I've had a  
21 chance to actually refine testimony with my expert  
22 witnesses, it's hard to say whether or not I can cut  
23 down the proposed summary time and how much I can  
24 cut it down.

25 And so, I'm happy to continue to update the

1 Board, the hearing team, with my ability to do so.  
2 I just don't have any ability to refine that as of  
3 right now.

4 HEARING OFFICER DODUC: Any other comments  
5 that is new in substance with respect to the issue  
6 of time limits?

7 Ms. Spaletti [sic].

8 MS. SPALETTA: Thank you. Jennifer  
9 Spaletta for Central --

10 HEARING OFFICER DODUC: Spaletta, sorry.

11 MS. SPALETTA: That's okay. I would like  
12 to make a suggestion. I think it would help with  
13 the efficiency and the length of time that the  
14 hearing will take is that --

15 HEARING OFFICER DODUC: I welcome that.

16 MS. SPALETTA: -- after the parties get  
17 done with discovery and stipulations and have  
18 testimony submitted, that we have an additional  
19 prehearing conference where we go over time limits  
20 and order of witnesses and order of examination. I  
21 think that spending a couple hours with you and the  
22 parties once we have seen everything that people  
23 intend to submit could be very beneficial for  
24 organizing the presentation at the hearing, and we  
25 would certainly all be more informed than we are

1 today.

2           So I think it's difficult to do those  
3 things now but we'd be in a perfect position to do  
4 it maybe two weeks before the hearing.

5           HEARING OFFICER DODUC: Thank you for that  
6 thoughtful suggestion.

7           Anyone else? All right. Let's now talk  
8 about order of presentation.

9           I'm proposing we begin with BBID, then the  
10 Division of Water Rights prosecution team.

11           Anyone else wishing to suggest a particular  
12 order or any revision to starting off with BBID and  
13 the prosecution team?

14           Mr. Kelly.

15           MR. KELLY: Yes, Board Member Doduc. I  
16 don't believe it's appropriate at all to force BBID  
17 to put on -- to go first. BBID doesn't have to  
18 prove anything.

19           The prosecution team has to prove that BBID  
20 violated Water Code section 1052 and engaged in the  
21 unauthorized diversion of water. That means that  
22 the prosecution team's got to prove that BBID  
23 diverted during that time, how much water BBID  
24 diverted, and that there was no water available at  
25 BBID's point of diversion.

1 I don't think it's appropriate to put BBID  
2 in the position of having to prove its innocence  
3 before the prosecution team has established  
4 anything.

5 HEARING OFFICER DODUC: Any other comments?  
6 I see Ms. Zolezzi nodding her head. Do you wish to  
7 enter that into the record?

8 MS. ZOLEZZI: Yes, it's a simple matter of  
9 due process, and burden of proof is the prosecution  
10 team has to prove there is a violation before BBID  
11 even has to put any evidence on. So I would totally  
12 agree with Mr. Kelly.

13 HEARING OFFICER DODUC: And Mr. Herrick is  
14 also nodding his head.

15 MR. HERRICK: Yes.

16 HEARING OFFICER DODUC: All right. Yes.

17 MR. TAURIAINEN: Andrew Tauriainen,  
18 prosecution team. The prosecution team agrees.

19 HEARING OFFICER DODUC: All right. Thank  
20 you very much.

21 If there are no other comments with respect  
22 to order of presentation -- actually, before we move  
23 off this topic, let me turn to the non-BBID and  
24 prosecution team parties, including Mr. Morat, and  
25 ask if you have any particular requests with respect



1 to the order.

2           Especially you, Mr. Morat, since you are a  
3 unique party in this -- well, actually, everyone is  
4 unique, but you are different in that you're  
5 proposing, I believe, was ten minute of direct  
6 testimony, no cross-examination and no other  
7 engagement. Do you have a preference in terms of  
8 the order for your testimony?

9           MR. MORAT: Board Member Doduc, I do not.

10          HEARING OFFICER DODUC: Okay

11          MR. MORAT: At the wish of the Board, I'll  
12 testify.

13          HEARING OFFICER DODUC: Anyone else wishing  
14 to express a preference? Mr. Herrick.

15          MR. HERRICK: Just that South Delta's  
16 preference after the prosecution team and BBID, the  
17 rest of us, I don't see any reason that we would  
18 insist upon one or the other being first or second  
19 or third.

20          HEARING OFFICER DODUC: All right.

21          MR. TAURIAINEN: Board Member Doduc, I just  
22 want to make sure; I was perhaps overly brief.

23                 The prosecution team agrees with all the  
24 other parties. The prosecution team has the burden  
25 of proof.

1 HEARING OFFICER DODUC: Overly brief. I  
2 don't know that I've ever heard that statement, but  
3 please go ahead.

4 MR. TAURIAINEN: Pardon. Possibly  
5 redundant. Yeah, the prosecution team has the  
6 burden, and should go first in the hearing.

7 HEARING OFFICER DODUC: Thank you.

8 All right. Next issue, opening statements.

9 Oral opening statements will be limited to  
10 20 minutes per party or groups of parties, should we  
11 have groups, who submitted cases in chief. A party  
12 may submit a written opening statement before the  
13 hearing. Any policy oriented statements by a party  
14 or group of parties should be included in the  
15 opening statement.

16 Does anyone have any comment on that?

17 MS. KINCAID: You mentioned that it was an  
18 option to do a written. Is there any page limit on  
19 that? I'm assuming that will be set at a later  
20 date.

21 HEARING OFFICER DODUC: I wasn't intending  
22 to, but now I will. Thank you, Ms. Kincaid.

23 MR. KNAPP: You probably should. Thank  
24 you.

25 HEARING OFFICER DODUC: All right. Seeing

1 no other commenter, let's move on to witness list,  
2 which Mr. Kelly has already flagged for us today.

3 BBID and Central Delta Water Agency  
4 submitted incomplete witness lists with their NOIs.  
5 It is -- well, let me first hear from you with  
6 respect to the status of that, because as we select  
7 another set of hearing dates, I will be setting  
8 another deadline specifically for BBID and Central  
9 Delta Water Agency to complete your witness list.

10 And if you wish to comment on that,  
11 Mr. Kelly, please do.

12 MR. KELLY: Yes, thank you, Hearing Officer  
13 Doduc. As I explained, I've got one of my lead  
14 witnesses is out of the country until the 15th of  
15 October. When he gets back I can talk to him.

16 There are two ways, I guess, that I can do  
17 this.

18 I could amend and provide witnesses Monday  
19 or Tuesday, but that means I'll do that without  
20 having the opportunity to talk to Mr. Wagner, and  
21 what would end up happening is I might end up naming  
22 more witnesses than I really need in an abundance of  
23 caution. I could use all those witnesses to  
24 testify, but I might not ultimately need to.

25 If I'm given the opportunity to confer with

1 Mr. Wager on the scope of his testimony, I could be  
2 more exact in identifying the witnesses and the  
3 subject matter.

4 And I'm happy to do it either way. I just  
5 want to let you know that those are essentially the  
6 two options that I have and the timing of those. I  
7 could do it right away; it just won't be as exact.

8 HEARING OFFICER DODUC: Thank you. And  
9 remind me, he's back October 12th?

10 MR. KELLY: October the 15th he's back in  
11 the country.

12 HEARING OFFICER DODUC: 15th, okay.

13 MR. KELLY: And that's actually when he  
14 gets back in the country. I'm hoping he's back to  
15 work the next day and that he's got the time to sit  
16 down and talk to me. I'm just telling you the  
17 information I have from his office, and so I don't  
18 want to have to come back and, you know, and kind of  
19 reexplain it.

20 He's back in the country on the 15th;  
21 that's all that I know now, I have not talked to  
22 him.

23 HEARING OFFICER DODUC: All right. Any  
24 other comments? Not seeing any, I'll take that under  
25 advisement, as well.

1           Rebuttals and cross of rebuttals.

2           After all parties have presented their  
3 cases in chief and the witnesses have been cross-  
4 examined, I will allow 30 minutes of rebuttal for  
5 each party or group of parties, and I will allow 30  
6 minutes of cross-examination of rebuttal witnesses  
7 by each party or group of parties.

8           I will remind you that rebuttal evidence is  
9 new evidence used to rebut evidence presented by  
10 another party. The parties may submit written  
11 rebuttal testimony in advance of the hearing, though  
12 rebuttal testimony and exhibits need not be  
13 submitted prior to the hearing. However, I may  
14 require submittal of rebuttal testimony and exhibits  
15 before they are presented in order to improve  
16 hearing efficiency.

17           Rebuttal evidence is limited to evidence  
18 that is responsive to the evidence presented in  
19 connection with another party's case in chief, and  
20 it does not include evidence that should have been  
21 presented during the case in chief of the party  
22 submitting rebuttal evidence.

23           This was obviously written by an attorney.

24           It also does not include repetitive  
25 evidence.

1           Cross-examination of rebuttal evidence will  
2 be limited to the scope of the rebuttal evidence.

3           Does anyone have questions? Please direct  
4 them at Ms. Kuenzi.

5           Ms. Spaletta, please advise me on how to --  
6 how other courts do this.

7           MS. SPALETTA: The whole point of rebuttal  
8 evidence is to rebut what is presented at the  
9 hearing by --

10          HEARING OFFICER DODUC: I understand that.

11          MS. SPALETTA: -- in the case in chief.  
12 Rebuttal evidence cannot be submitted in writing  
13 ahead of time because you have to see what comes in  
14 at the hearing first. So...

15          HEARING OFFICER DODUC: But however, it may  
16 be submitted during the course of the hearing before  
17 we get to the rebuttal testimony.

18          MS. SPALETTA: If we had robot experts who  
19 could perform entire expert reports between five  
20 p.m. and six a.m. in the morning, that is  
21 theoretically possible.

22          HEARING OFFICER DODUC: Ms. Spaletta, I  
23 have conducted other water rights hearings where  
24 this was done.

25          MS. SPALETTA: I don't think it's going to

1 be --

2 HEARING OFFICER DODUC: I have complete  
3 faith in your witnesses.

4 MS. SPALETTA: I don't think it's going to  
5 be possible to submit complete written rebuttal  
6 testimony on a timeframe of a two- to three-day  
7 hearing in this case, so I think it should be  
8 encouraged, which may mean that we take a couple  
9 day's break between cases in chief and rebuttal.

10 But I think that the timing of presentation  
11 of rebuttal evidence is one of those things that  
12 would be best discussed a couple weeks before the  
13 hearing when we've actually seen the testimony,  
14 written testimony that's going to come in in the  
15 cases in chief. I think it would be a much more  
16 efficient and useful exercise at that time.

17 HEARING OFFICER DODUC: Thank you,  
18 Ms. Spaletta.

19 Do you wish to comment? Please.

20 MS. KUENZI: Just very briefly. I wanted  
21 to remind all the parties that, unlike in a court of  
22 law, you're going to have the written testimony of  
23 the case in chief of the parties in advance, so  
24 there would -- the idea would be that there would be  
25 a matter of several weeks to prepare rebuttal

1 testimony.

2 I understand there may be new testimony  
3 that comes up during the hearing that couldn't have  
4 been anticipated, and that's a different matter, but  
5 in theory, the substance and the bulk of the  
6 testimony will be known in advance.

7 HEARING OFFICER DODUC: Thank you. Any  
8 other comments? Seeing none, okay, let's talk about  
9 closing briefs.

10 At the close of the hearing, I will set a  
11 schedule for filing written closing briefs, so more  
12 will come later on that.

13 Anyone wish to make any suggestions or  
14 comments at this time with respect to closing  
15 briefs?

16 Mr. Kelly.

17 MR. KELLY: Yes, Hearing Officer Doduc. I  
18 actually, I want to talk about the possibility of  
19 opening briefs. I don't know if there's going to be  
20 an opportunity to talk about other things, but since  
21 you mentioned briefing, I wonder whether or not  
22 there's a benefit to the hearing team from some  
23 prehearing briefing on some of the legal issues.

24 It seems like there's a disagreement among  
25 some of the water users and the prosecution team on



1 the threshold question of availability and what that  
2 means. I don't want to misstate the prosecution  
3 team's position, but it seems to be one of an  
4 analysis of publicly available information that's  
5 kind of out there, and the water users seem to  
6 believe it's a more exacting type of analysis. And  
7 so I wonder whether or not some briefing on that  
8 issue and some citation to authority would be in  
9 order.

10           And I think that that actually might help  
11 the hearing, because it'll kind of focus and give  
12 the hearing team an idea of what people are arguing.  
13 If you just hear testimony evidence and see exhibits  
14 and things like that, you're kind of not sure how it  
15 fits into somebody's theory of the case; I think  
16 there's a little bit of disconnect that happens.  
17 And so people teeing up those issues up front might  
18 go a long way to having the evidentiary hearing make  
19 more sense.

20           HEARING OFFICER DODUC: And how is that  
21 different from, say, your submitted opening  
22 statements?

23           MR. KELLY: Well, opening statements, from  
24 what I see, and especially because there's going to  
25 be page limits and time limits, seem to be less

1 geared toward those legal issues, there are going to  
2 be heavy citations and the like.

3 I see an opening statement differently. I  
4 don't want to go back to the difference between a  
5 trial and an administrative hearing, but I'll just  
6 use it as an example.

7 In a trial there's usually extensive  
8 pretrial motions that happen. Not just motions in  
9 limine and things to exclude evidence and, you know,  
10 to refine the presentation of things, but there's  
11 almost always a pretrial brief that gets filed where  
12 you tee up all the legal issues for the Court, and  
13 then you go to court, then you have an opening  
14 statement, and then you have a full trial, and then  
15 you have the closing brief.

16 And what the closing brief does is the  
17 closing brief really then focuses on evidence that  
18 was actually admitted. In your opening statement  
19 you might cite the testimony and refer to testimony  
20 that the hearing team decides is not admissible.  
21 And so, you know, there's a need then to refine the  
22 argument based on admissible evidence.

23 And so, again, I just think that it would  
24 aid in the presentation of evidence if there was an  
25 ability for folks to brief ahead of time, to let the

1 hearing team know where the individual parties are  
2 going with that evidence and how it relates to their  
3 case.

4 HEARING OFFICER DODUC: Thank you. I'll  
5 take that under advisement.

6 All right. Let me take this opportunity to  
7 also remind parties that there shall be no *ex parte*  
8 communications with the State Water Board members or  
9 a State Water Board hearing team staff and  
10 supervisors regarding substantive or controversial  
11 procedural issues within the scope of the  
12 proceeding.

13 Any communications regarding potentially  
14 substantive or controversial procedural matters,  
15 including but not limited to evidence, briefs, and  
16 motions, must demonstrate that all parties were  
17 served and the manner of service.

18 I will provide a letter by the end of the  
19 next week confirming the procedural issues addressed  
20 today and setting the hearing dates.

21 I still would like to receive your  
22 availability in December and January by, I believe  
23 it was noon Wednesday, in order to help shape that  
24 determination.

25 I thank you all for participating in this

1 prehearing conference, especially for the very  
2 useful and very productive discussion and  
3 suggestions that were made today.

4           And with that, this prehearing conference  
5 is concluded. Thank you.

6                           (Adjourned at 9:51 a.m.)

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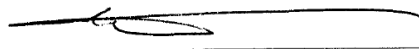
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**REPORTER' S CERTIFICATE**

I do hereby certify that the testimony in the foregoing hearing was taken at the time and place therein stated; that the testimony of said witnesses were reported by me, a certified electronic court reporter and a disinterested person, and was under my supervision thereafter transcribed into typewriting.

And I further certify that I am not of counsel or attorney for either or any of the parties to said hearing nor in any way interested in the outcome of the cause named in said caption.

IN WITNESS WHEREOF, I have hereunto set my hand this 28th day of October, 2015.



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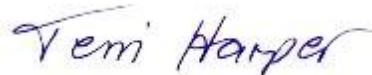
PETER PETTY  
CER\*\*D-493  
Notary Public

**TRANSCRIBER'S CERTIFICATE**

I do hereby certify that the testimony in the foregoing hearing was taken at the time and place therein stated; that the testimony of said witnesses were transcribed by me, a certified transcriber and a disinterested person, and was under my supervision thereafter transcribed into typewriting.

And I further certify that I am not of counsel or attorney for either or any of the parties to said hearing nor in any way interested in the outcome of the cause named in said caption.

IN WITNESS WHEREOF, I have hereunto set my hand this 28th day of October, 2015.



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Terri Harper  
Certified Transcriber  
AAERT No. CET\*\*D-709