
State Water Resources Control Board

October 22, 2015

VIA ELECTRONIC MAIL

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

Dear Hearing Officer Doduc:

BBID ACL HEARING – LEGAL ISSUES TO ADDRESS IN PRE-HEARING BRIEFS

1. Opening Briefs

The Prosecution Team requests that the Hearing Officer allow each party who is submitting a case-in-chief to file an opening brief (or “trial brief”) containing a concise statement of the party’s case, including citations to relevant proposed exhibits and legal authority. Although hearing notices are generally silent, parties regularly submit this type of opening brief in enforcement proceedings to outline the elements of alleged violations and proposed remedies and assist the Hearing Team understand the issues. Here, the Prosecution Team would address the elements of the alleged Water Code section 1052 violation and the proposed administrative civil liability.

The Prosecution Team requests that the Hearing Officer direct the parties to submit any opening brief with their case-in-chief witness testimony and exhibits no later than January 19, 2016.

Based on the Notices of Intent and subsequent communications, the parties who intend to submit case-in-chief witness testimony and exhibits include the Prosecution Team, Byron-Bethany Irrigation District, the City and County of San Francisco, the Department of Water Resources, Richard Morat, South Delta Water Agency and the San Joaquin Tributaries Authority.

2. No Pre-Hearing Rebuttal Briefs

In the interest of administrative economy, the Prosecution Team requests that the Hearing Officer prohibit the parties from submitting pre-hearing rebuttal briefs. Pre-hearing rebuttal briefs would by necessity address only previously-submitted case-in-chief testimony and evidence, whereas post-hearing closing briefs would more efficiently address and rebut all relevant testimony, evidence and legal issues raised in submittals or at hearing.

If the Hearing Officer is inclined to allow pre-hearing rebuttal briefs, the Prosecution Team requests that all parties, including those submitting cases-in-chief, be allowed to submit such briefs with their rebuttal testimony and exhibits on February 22, 2016.

3. Motions in Limine

The Prosecution Team requests that the Hearing Officer allow motions in limine for pre-hearing rulings on discrete evidence or threshold legal issues, with reasonable limits and opportunity to oppose. However, parties should not use motions in limine to argue their fact theories or non-threshold legal arguments; parties may address those topics in closing briefs. To that end, the Prosecution team requests that the Hearing Officer direct the parties to address only discrete evidentiary objections or threshold legal issues (e.g., jurisdiction) in motions in limine.

The Prosecution Team requests that the Hearing Officer not set a limit on the number of motions in limine, but the Hearing Officer should admonish the parties that overly-broad or repetitive motions, or those addressing fact theories or non-threshold legal issues, may be stricken.

The Prosecution Team requests that the Hearing Officer direct the parties to submit any motions in limine within one week after the rebuttal evidence and testimony deadline, or no later than February 29, 2016, and to submit oppositions to such motions at least ten days prior to hearing, or no later than March 11, 2016.

4. Reasonable Format and Page Limits

The Prosecution Team requests that the Hearing Officer place reasonable format and page limits on briefs as follows:

All briefs: Standard pleading paper (28 lines), double spaced, at least 11 point font.

Opening Briefs: 10 pages

Pre-Hearing Rebuttal Briefs (if allowed): 10 pages

Motions in Limine and Oppositions: 5 pages each

Thank you for considering these requests.

Sincerely,

/s/ Original signed by

Andrew Tauriainen
OFFICE OF ENFORCEMENT
Attorney for Prosecution Team

cc: BBID ACL Service List

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

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