STATE WATER RESOURCES CONTROL BOARD

In the matter of Administrative Civil Liability Complaint issued against Byron-Bethany Irrigation District	**Prosecution Team's Opposition to Byron-Bethany Irrigation District's Motion to Quash Subpoena, or Alternatively, Motion for Protective Order**

INTRODUCTION

Byron-Bethany Irrigation District (BBID) has steadfastly refused to even discuss fact stipulations as to how much it has diverted until the parties complete discovery. The Prosecution Team therefore served a targeted subpoena *duces tecum* (Subpoena) seeking documents related to BBID's diversions for a ninety day period beginning June 1, 2015. Despite having served multiple discovery requests much broader than the Subpoena, BBID now seeks shelter from an obligation to produce documents related to its diversions. BBID cannot have it both ways. BBID must be held to the same discovery standards as the other parties; it cannot claim the discovery process as a sword and shield that only it may wield.

None of BBID's reasons asserted in support of its Motion to Quash Subpoena or Alternatively, Motion for Protective Order (Motion) have merit. First, the documents sought are relevant or are reasonably calculated to lead to the discovery of admissible evidence. BBID's diversion information from before the alleged violations period is relevant to the question of whether or when BBID altered its diversions in response to the June 12, 2015, unavailability notice. BBID's diversion information from after the alleged violations period is relevant to the factors set forth in Water Code section 1055.3. BBID's delivery contracts are relevant to the question of whether BBID had alternate supplies during the alleged violations periods, an issue specifically raised by BBID's counsel recently in these proceedings. Second, BBID has made no showing whatsoever that producing the requested documents would cause an undue burden. Finally, BBID has not shown that documents such as delivery contracts are "irrelevant personal information." The Motion should be denied.

BACKGROUND

BBID's Refusal to Stipulate to Diversion Amounts Necessitated Discovery. The Prosecution Team initiated discussions with BBID regarding proposed stipulations on the factual matters listed in the Hearing Officer's September 11 letter. (Declaration of Andrew Tauriainen (Tauriainen Decl.) ¶ 3.) The Prosecution Team proposed to stipulate to the gauge data for the BBID diversion point as reported on the California Data Exchange Center (CDEC) website maintained by the Department of Water Resources (DWR). (*Id*.) BBID's counsel has previously represented BBID's self-reported diversion data on the CDEC website as "very transparent" and sufficiently reliable to support a proposed reduction in diversions. (*Id.* at ¶ 8.) BBID rejected the Prosecution Team's stipulation overture, in part because of what BBID claims was lack of time to investigate the facts prior to stipulation, but also because BBID now claims to be unable to independently verify the CDEC reported diversion amounts. (*Id*. at ¶¶ 4-7.) BBID also raised, for the first time, the potential claim that it diverted contract water during the alleged violation

period, should the June 12 unavailability notice be upheld to prevent diversion under BBID's claimed pre-1914 right. (*Id*. at ¶ 6.) Immediately following the September 25 Pre-Hearing Conference, BBID's counsel informed the Prosecution Team's counsel that BBID was not opposed to discussing fact stipulations, but would only do so after the parties conduct discovery. (*Id*. at ¶ 9.)

BBID Has Itself Sought Extensive Discovery. BBID has conducted a vigorous discovery campaign, starting with the Public Records Act (PRA) request dated July 21, 2015. BBID's PRA request seeks documents in nineteen separate categories, only a portion of which directly relate to the Administrative Civil Liability Complaint (ACLC), and most of which encompass time periods from January 1, 2015, and in some cases going back as far as January 1, 2013. (Tauriainen Decl. ¶ 10.) More recently, BBID issued a series of deposition notices with document requests seeking records relating to the Board's curtailment activities in 2015, the DWR drought activities during 2015, and BBID's diversions during all of June and the 2015 irrigation season. (*Id*. at ¶¶ 11-17.) In most cases, BBID seeks documents from the *entire calendar year* 2015. (*Id.*)

The Subpoena. The Prosecution Team served the Subpoena on October 29, asking BBID for 11 categories of documents to be produced on November 13, 2015. (Tauriainen Decl. ¶ 18.) The Subpoena seeks documents from June 1 through September 30, 2015, relating to: 1) BBID's diversions; 2) BBID's diversions pursuant to BBID's claimed pre-1914 appropriate water right; 3) Contracts or agreements between BBID and DWR relating to BBID's diversions; 4) BBID's reporting of diversions to DWR; 5) Water supply contracts or agreements to supply BBID with water; 6) BBID's diversions pursuant to water supply contracts or agreements to supply itself; 7) Water supply contracts or agreements for BBID to supply others; 8) BBID's diversions pursuant to water supply contracts or agreements to supply others; 9) BBID's delivery of water inside its boundaries; 10) BBID's delivery of water outside its boundaries; and 11) BBID's agreements with USBR, DWR or others to wheel water. (*Id*.)

BBID objected to the scope and timing of the Subpoena, and sought to meet and confer as to these issues. (Tauriainen Decl. ¶ 19.) The parties did so, but were unable to reach agreement because BBID insisted that documents outside of the alleged violation period (June 13-25) are beyond the scope of the ACLC and irrelevant. (*Id*. at ¶ 20.) BBID's Motion followed.

LEGAL STANDARD

The Water Code governs the Board's hearing and discovery procedures and incorporates the Civil Discovery Act, including its provisions for issuing protective orders and limiting discovery. (See generally Wat. Code, § 1100; Gov. Code, § 11400 et seq.; Code Civ. Proc., § 2016.010 et seq., Cal. Code Regs., tit. 23, § 648.) A party is entitled to discovery "regarding any matter, not privileged that is relevant to the to the subject matter involved in the pending action… if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence." (Code Civ. Proc., § 2017.010.) BBID wrongly asserts that the Prosecution Team must "make a prima facie showing the requested documents are relevant *and necessary to prove a material element of its claims or in determining the level of penalties sought in this proceeding."* (Motion at p. 5:11-12, italics added.) The Prosecution Team does not need to prove the requested documents are "necessary" to prove its case; it only needs to show that the documents are relevant.

A party seeking a protective order bears the burden to show good cause for whatever order is sought. (*Nativi v. Deutsche Bank National Trust Co*. (2014) 223 Cal.App.4th 261, 318.)

A protective order will not issue based on entirely conclusory allegations that lack any factual specificity. (*Id*.)

ARGUMENT

A. The requested documents are relevant.

The Prosecution Team seeks documents concerning BBID's diversions for the June days preceding the first day of alleged unlawful diversion, as well as information about BBID's diversions in the approximately two months following the last day of unlawful diversion alleged in the ACLC (June 26-September 30, 2015). BBID objects to producing any documents concerning its diversions except for the specific days identified in the ACLC (June 13-25, 2015). Responsive documents that fall immediately before and after the dates on which the ACLC alleges unlawful diversions are discoverable if they meet the low bar of either "being itself admissible or appears reasonably calculated to lead to admissible evidence." (Code Civ. Proc., § 2017.010.) Documents related to BBID's diversions in the days immediately preceding and following the alleged violation period easily meet this low threshold. Courts routinely hold that the right to discovery is liberally construed, and discovery statutes should be construed broadly to uphold the right to discovery wherever possible. (*Emerson Elec. Co. v. Superior Court (Grayson)* (1997) 16 Cal.4th 1101, 1108.)

Discovery of BBID's diversions before and after the alleged violation period is relevant to test the legitimacy of any June 13-25 diversions. The amount and timing of BBID's diversions immediately preceding the State Water Board staff's June 12 notice of unavailability are relevant as they may shed light on the purposes and extent of BBID's diversions on June 13 and thereafter. Likewise, BBID's pattern of diversions during and after the alleged violations period, as compared to its water supply contracts, will also be relevant to test any claims BBID may make as to the purpose of its June 13-25 diversions.

The circumstances of BBID's diversions in response to the notice of unavailability may be relevant to the Board in determining the appropriate civil liability as required by Water Code. (Wat. Code, § 1055.3 ["In determining the amount of civil liability, the board shall take into consideration 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 the corrective action, if any, taken by the violator"].) Moreover, this action involves BBID's unlawful diversions following issuance of the June 12 notice of unavailability. The Prosecution Team's July 20 ACLC identified the dates of BBID's alleged diversions based on information known to it at the time. If discovery reveals that BBID has engaged in additional instances of unlawful diversions the Prosecution Team has the discretion, but not the obligation, to add additional days of alleged unlawful diversion to this action, or to bring a separate enforcement action.

The cases cited by BBID do not support its crabbed view of the permitted scope of discovery. In *Calcor Space Facility,* the court recognized the rule that a propounding party need only show a "reasonable relationship between the materials sought to be produced and the issues involved in the case." (*Calcor Space Facility v. Superior Court (Thiem Industries, Inc.)* (1997) 53 Cal.App.4th 216, 218-219.) The dispute was between a contractor and subcontractor over a contract to manufacture a particular gun mount. The subcontractor sought *ten years* of all variety of documents relating to all types of gun mounts, even though the litigation involved only a single type of mount. (*Id*. at p. 220.) By contrast, the Prosecution Team is seeking diversion information, which is precisely at issue, and for a significantly

more limited period of time (90 days). The Prosecution Team's targeted documents that are specifically at issue in this matter – BBID's diversions. The requests are limited in time to only 90 days of diversions which immediately surround the specific dates alleged in the draft ACL. The information the Prosecution Team seeks is relevant, and should be produced.

B. <u>BBID has not met its burden to show that the Subpoena imposes an undue burden or is harassing.</u>

BBID baldly asserts that it would be "unduly burdensome and harassing" to produce the requested documents. (Motion at pp. 5:21-6:10.) A party like BBID seeking a protective order bears the burden of demonstrating, with facts, that the requests are unduly burdensome. (E.g., *Standish v. Superior Court* (1999) 71 Cal.App.4th 1130, 1145.) BBID, however, offers no competent evidence to support this bare assertion. The only evidence BBID relies on is a single sentence in the declaration of BBID's outside counsel: "I am informed and believe that BBID will need to commit significant man-hours and monetary expenditure to comply with the SWRCB's broad request for documents in the Subpoena unless it is modified as requested." (Vergara Decl. ¶ 6.) BBID cites no facts to support the assertion, nor quantify what "significant man-hours" or "monetary expenditure" mean.

Further, the burden on BBID has to be measured as the incremental burden on producing additional documents for the time period beyond June 13-25, which BBID has conceded it must produce. There is no reason to believe that producing diversion-related information for additional days will impose any additional burden on BBID. While responding to any discovery request imposes some burden on a party to litigation, the relevant legal question is whether the alleged burden is "undue." As BBID has made no showing as to what the burden on it actually is, there is no basis for the Hearing Officer to determine that the burden of responding is "undue." (*People v. Superior Court* (1967) 248 Cal.App.2d 276, 281 [motion for protective order denied when it was not supported by specific facts].)

BBID's claim of burden should also be viewed against the document request burden it seeks to impose on other parties to this case. BBID's expansive PRA request seeks many documents without any time limit, and others dating to January 1, 2015, September 1, 2014, or even January 1, 2013. (Tauriainen Decl. ¶ 10.) BBID's numerous Deposition Notices include Requests for Production of Documents covering a broad range of subject for the *entire calendar year* 2015. (*Id*. at ¶¶ 11-17.) BBID has not limited its PRA request or Requests for Production of Documents to BBID's diversions from June 13-25, as it is seeking in this Motion; and it is not seeking only documents from June 1 - September 30, as the Prosecution Team seeks through the Subpoena. Presumably BBID believed that information concerning BBID's diversions for the *entire calendar year* would be relevant to this case or it would not have sought that information itself. The Prosecution Team is not even asking that BBID be held to its own standard – the entire calendar year 2015 and beyond – but merely three months surrounding its unlawful diversion alleged in the ACLC. BBID must be held to the same discovery standards it seeks to impose on other parties to this case.

BBID's Motion is also procedurally defective because BBID did not adequately meet and confer regarding the newly-asserted "unduly burdensome" claim. A motion for protective order can only be filed after the party seeking the protective order met and conferred with the propounding party. (*Zellerino v. Brown* (1991) 235 Cal.App.3d 1097, 1111.) Here, BBID did not meet and confer over their newly asserted objection that it would be unduly burdensome to produce the requested documents. (Tauriainen Decl. ¶ 21.) BBID's failure to meet and confer is an independent basis on which the motion should be denied.

C. <u>The documents sought are not "personal" information shielded from discovery.</u>

The Subpoena seeks copies of BBID's water supply contracts and agreements with third parties because BBID's counsel has indicated that BBID has purchased water on the transfer market in 2015, and BBID may claim that its diversions were pursuant to contractual water right and not its pre-1914 water right. (Tauriainen Decl. ¶ 6.) Yet in its Motion, BBID characterizes these documents as seeking "personal" information, and objects on that basis. The objection is unfounded, as BBID has not explained why such business contracts and communications contain personal information.

BBID's cited cases prove the point: *Lantz v. Superior Court* (1994) 28 Cal.App.4th 1839, 1853-54 [plaintiff's medical records of her double mastectomy were subject to a right to privacy in her unrelated sexual harassment lawsuit]; *City of Santa Barbara v. Adamson* (1980) 27 Cal.3d 123, 130 [a city's ordinance which purported to define what constituted a "family" implicated individuals' privacy interests]; *Valley Bank of Nevada v. Superior Court* (1975) 15 Cal.3d 652, 657 [information a bank's customer discloses to its bank is discoverable in proper cases, but the bank has a duty to inform the customer so he or she can seek a protective order before disclosing the customer's information]; *Stanford v. Superior Court* (1981) 119 Cal.App.3d 516 [university employee's personnel records potentially private in an unrelated litigation].

BBID's Motion utterly fails to establish that commercial contracts involving water delivery to and from a public agency, and communications regarding same, are "personal" information potentially shielded from discovery. Documents of routine commercial business transactions are not within the realm of what an ordinary person would consider "personal." Even if the commercial contracts sought contain some personal information, which is doubtful, the documents can be produced in redacted form if appropriate. As such, BBID has not carried its burden and the Motion should be denied.

As with BBID's new unduly burdensome argument, BBID did not meet and confer over their newly asserted objection. (Tauriainen Decl., ¶ 21.) BBID's failure to meet and confer is an independent basis on which the Motion should be denied. (*Zellerino, supra*, at p. 1111.)

CONCLUSION

The Prosecution Team respectfully requests that the Hearing Officer deny BBID's Motion. The Prosecution Team however does not object to extending the Subpoena compliance deadline to November 30, 2015.

Sincerely,

Andrew Tauriainen
OFFICE OF ENFORCEMENT
Attorney for the Prosecution Team

SERVICE LIST OF PARTICIPANTS
BYRON-BETHANY IRRIGATION DISTRICT
ADMINISTRATIVE CIVIL LIABILITY HEARING
(09/02/15; Revised 09/10/15; Revised 10/06/16; Revised 10/22/15)

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STATE WATER RESOURCES CONTROL BOARD

In the matter of Administrative Civil Liability Complaint issued against Byron-Bethany Irrigation District	**Declaration of Andrew Tauriainen in Support of Prosecution Team's Opposition to Byron-Bethany Irrigation District's Motion to Quash Subpoena, or Alternatively, Motion for Protective Order**

I, Andrew Tauriainen, declare as follows:

1. I am a Staff Counsel III (Specialist) with the State Water Resources Control Board's Office of Enforcement. I have been a practicing attorney specializing in environmental and water law since 2001, California State Bar No. 214837. I joined the Office of Enforcement in 2011. I represent the Prosecution Team in the matter of the Administrative Civil Liability Complaint issued against Byron-Bethany Irrigation District on July 20, 2015.

2. On September 11, 2015, Hearing Officer Doduc directed the Prosecution Team to "discuss the possibility of stipulation with respect to the following factual matters: 1) Did BBID divert water from the intake channel to the Banks Pumping Plant from June 13 through June 25, 2015? If so, (a) at what rate and in what quantity was water diverted; (b) under what claim of right was water diverted? 2) Does BBID hold or claim any appropriative, contractual or riparian water rights other than the pre-1914 rights claimed in State of Water Diversion and Use S021256? 3) Did BBID divert water from June 13 through June 25, 2015, for health and safety needs or for critical power generation? If so, (a) when and for how long did the diversions occur; (b) what quantity of water was diverted and at what rate; and (c) for what beneficial uses was the water diverted?" (Hearing Officer's September 11, 2015, letter, available at http://www.waterboards.ca.gov/waterrights/water_issues/programs/hearings/byron_bethany/docs/bbid_sept11_email.pdf (last visited November 16, 2015).)

3. On September 17, 2015, I sent BBID's counsel a draft proposed stipulation regarding the topics listed in the Hearing Officer's letter. As to BBID's diversions during June 13 through June 25, 2015, I proposed to stipulate to the diversion amounts shown on the California Data Exchange Center database maintained by the Department of Water Resources (See http://cdec.water.ca.gov/cgi-progs/queryDaily?BBI&d=30-Jun-2015+09:41&span=1month; see also the Department of Water Resources, Division of Operations & Maintenance, Delta Hydrology Conditions for June 2015). A true and correct copy of the cover email and draft proposed stipulation are marked as Attachment 1 hereto.

4. On September 23, 2015, I received a letter from BBID's counsel, informing me that "BBID has not had the opportunity to adequately investigate and research the specific categories of facts enumerated in the Hearing Officer's September 11, 2015, letter and,

therefore, at this time is unwilling to stipulate to the matters contained in your draft stipulation." (September 23 letter at p. 1.) A true and correct copy of the September 23, 2015, letter is marked as Attachment 2 hereto.

5. The September 23 letter states that "BBID is not aware of any gauge called the "Byron Bethany Irrigation District Diversion" station ID BBI. BBID also believes the diversion figures that the State Water Resources Control Board (SWRCB) obtained from the California Data Exchange Center (CDEC), contained in Paragraph I of you Draft Stipulation, are incorrect." (September 23 letter at pp. 1-2.)

6. The September 23 letter states that "If, in fact, there was sufficient water available for BBID to divert under its pre-1914 appropriative water right from June 13 through June 25, 2015, then it may be held that all water diverted by BBID was diverted under that right. If BBID needs to rely on another basis of right, it may assert those rights. As you know, BBID did purchase water on the transfer market in 2015. BBID is not going to forego reliance on any basis of right for the diversion of water between June 13 and June 25, 2015." (September 23 letter at p. 2.)

7. On September 23, I emailed BBID's counsel to clarify BBID's position regarding the CDEC reported diversion rates. Counsel wrote back indicating that "Diversion quantities are what they are – we're just not prepared to stipulate to actual diversions at a gauge that is fictional and to data that we, at the moment, cannot independently verify." A true and correct copy of the September 23 email chain is marked as Attachment 3 hereto.

8. On May 21, 2015, BBID's counsel Daniel Kelly sent an email to the Delta Watermaseter, the State Water Board's Executive Director, Chief Counsel, and others, proposing to agree to reduce BBID's diversions by 25% in exchange for not being curtailed. Mr. Kelly described BBID's point of diversion and diversion amount reporting process as follows: "Our reporting is very transparent. As we diver[t] off the SWP intake channel-our actual diversion are reported *daily* to DWR and the diversion figures are posted to DWR's website. We can provide those figures regularly to the SWRCB to confirm actual reductions in diversions of 25% below our reported demand for this year." (Italics in original.) A true and correct copy of the May 21, 2015, letter is marked as Attachment 4 hereto.

9. On September 25, 2015, immediately following the Pre-Hearing Conference in the BBID matter, BBID's counsel Daniel Kelly took me aside to discuss fact stipulations. Mr. Kelly indicated that BBID was not generally opposed to discussing fact stipulations, but that BBID would do so only after the discovery process was complete.

10. On July 21, 2015, the day after the Administrative Civil Liability Complaint (ACLC) was issued, BBID submitted an extensive Public Records Act (PRA) request. A true and correct copy of the July 21, 2015, PRA request is marked as Attachment 5 hereto. The PRA request seeks records from nineteen (19) separate categories, some without any time limit (e.g., PRA request at ¶¶ 1-4), and others seeking documents dating to January 1, 2015 (*id*. ¶¶ 5-9, 12-13), September 1, 2014 (*id.* ¶¶ 11, 14), or even January 1, 2013 (*id*. ¶ 17.)

11. On October 27, 2015, BBID served amended Notices of Deposition and Requests for Production of Documents on Brian Coats, Jeffrey Yeazell and Kathy Mrowka. True and

correct copies of the Coats, Yeazell and Mrowka Amended Notices are marked respectively as Attachments 6, 7 and 8 hereto.

12. On October 29, 2015, BBID served a Notice of Deposition and Request for Production of Documents on Thomas Howard. A true and correct copy of the Howard Notice is marked as Attachment 9 hereto.

13. On November 10, 2015, BBID served a Notice of Deposition and Request for Production of Documents on John O'Hagan. A true and correct copy of the O'Hagan Notice is marked as Attachment 10 hereto.

14. On November 9, 2015, BBID served a Notice of Deposition and Request for Production of Documents on Paul Marshall. A true and correct copy of the Marshall Notice is marked as Attachment 11 hereto.

15. The Coats, Yeazell, Mrowka and Howard Notices all include as "Attachment A" a list of "Documents to be Produced" at their respective depositions, including: 1) All writings concerning or relating to the State Water Board's determination of water availability in the Sacramento and San Joaquin Watersheds and the Delta for 2015; 2) All writings concerning or relating to water right curtailments in 2015; 3) All writings concerning or relating to the diversion of water by Byron Bethany Irrigation District in 2015; 4) All writings concerning or relating to any exception to water right curtailments in 2015.

16. The O'Hagan Notice includes as "Attachment A" a list of "Documents to be Produced" at the deposition, including the same four categories set forth in the Coats, Yeazell, Mrowka and Howard Notices, plus an additional eight (8) categories, all of which related to documents concerning the entire calendar year 2015.

17. The Marshall Notice includes as "Attachment A" a list of "Documents to be Produced" at the deposition, in six (6) separate categories. Three of the categories seek documents from the entire calendar year 2015, two seek documents from June 2015, and one seeks documents from the "2015 irrigation season."

18. On October 29, 2015, I served a subpoena *duces tecum* (Subpoena) on BBID. A true and correct copy of the Subpoena is marked as Attachment 12 hereto. The Subpoena seeks documents from June 1 through September 30, 2015, relating to: 1) BBID's diversions; 2) BBID's diversions pursuant to BBID's claimed pre-1914 appropriate water right; 3) Contracts or agreements between BBID and DWR relating to BBID's diversions; 4) BBID's reporting of diversions to DWR; 5) Water supply contracts or agreements to supply BBID with water; 6) BBID's diversions pursuant to water supply contracts or agreements to supply itself; 7) Water supply contracts or agreements for BBID to supply others; 8) BBID's diversions pursuant to water supply contracts or agreements to supply others; 9) BBID's delivery of water inside its boundaries; 10) BBID's delivery of water outside its boundaries; and 11) BBID's agreements with USBR, DWR or others to wheel water.

19. By letter dated October 30, 2015, BBID objected to the scope and timing of the Subpoena, and seeking to meet and confer as to these issues. The October 30 letter claims that any documents outside of the alleged violation period of June 13 through June 25, 2015, are irrelevant. The letter also states that the November 13 deadline was

too soon. A true and correct copy of the October 30 letter is marked as Attachment 13 hereto.

20. On October 30, 2015, I began a series of email communications with BBID's counsel, seeking their input as to the specific changes they would like to see on the Subpoena. During the course of this correspondence, I offered to extend the Subpoena compliance deadline to November 30, as requested by BBID's counsel, and to limit the scope of the Subpoena to documents from June 1 through June 30, 2015. BBID's counsel rejected the offer to limit the scope to June, insisting that only the alleged violations period is relevant. In response, the Prosecution Team rescinded the offer of compromise. A true and correct copy of the October 30 through November 9 emails are marked as Attachment 14 hereto.

21. Neither BBID's October 30 letter nor the subsequent emails raise any claim that producing the documents would be unduly burdensome or that the requested documents contain "personal" information shielded from discovery.

I declare under penalty of perjury to the laws of the State of California that the foregoing is true and correct. Executed this 16th day of November, 2015, at Sacramento, California.

Andrew Tauriainen

SERVICE LIST OF PARTICIPANTS
BYRON-BETHANY IRRIGATION DISTRICT
ADMINISTRATIVE CIVIL LIABILITY HEARING
(09/02/15; Revised 09/10/15; Revised 10/06/16; Revised 10/22/15)

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Tauriainen, Andrew@Waterboards

From: Tauriainen, Andrew@Waterboards
Sent: Thursday, September 17, 2015 3:14 PM
To: Dan Kelly (dkelly@somachlaw.com)
Cc: Mrowka, Kathy@Waterboards
Subject: BBID ACLC Proposed Stipulation
Attachments: BBID Draft Stipulation.docx

Dan:

The September 11 letter from the Hearing Officer directs the Prosecution Team and BBID to discuss the possibility of stipulation with respect to certain factual matters prior to the September 25 pre-hearing conference. I have prepared the attached draft stipulation regarding the matters raised by the Hearing Officer. Let's reserve discussion of stipulation regarding other facts for after the pre-hearing conference. The draft includes placeholders for issues that are currently unclear; please provide justification for any proposals on those matters.

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Administrative Civil Liability against Byron-Bethany Irrigation District

Draft Stipulation
between
Division of Water Rights Prosecution Team
and
Byron-Bethany Irrigation District (BBID)

I. Did BBID divert water from the intake channel to the Banks Pumping Plant from June 13 through June 25, 2015? If so, (a) at what rate and in what quantity was water diverted;(b) under what claim of right was water diverted?

1. BBID diverted water from the intake channel to the Banks Pumping Plant from June 13 through June 25, 2015.

2. BBID's June 13 through June 25, 2015 diversions were made through the gauge referred to on the California Data Exchange Center as "Byron Bethany Irrigation District Diversion," Station ID BBI.

3. BBID diverted a total of 2,067 acre-feet from June 13 through June 25, 2015, at the rates shown on the California Data Exchange Center database maintained by the Department of Water Resources. (See http://cdec.water.ca.gov/cgi-progs/queryDaily?BBI&d=30-Jun-2015+09:41&span=1month; see also the Department of Water Resources, Division of Operations & Maintenance, Delta Hydrology Conditions for June 2015).

4. All of the water BBID diverted from June 13 through June 25, 2015 was diverted in reliance on BBID's pre-1914 water right claimed in Statement of Water Diversion and Use 021256.

II) Does BBID hold or claim any appropriative, contractual or riparian water rights other than the pre-1914 rights claimed in Statement of Water Diversion and Use S021256?

5. BBID does not possess any riparian rights.

6. BBID does not possess any pre-1914 rights other than as claimed in Statement of Water Diversion and Use 021256.

7. BBID holds Contract No. 14-06-200-785-LTR1 with the United States Bureau of Reclamation. BBID received zero water supply under this contract in 2014 and to date in 2015.

8. [placeholder for BBID to propose a stipulation regarding whether it diverted any water from June 13-25, 2015 pursuant to any claims of contractual right with Carmichael Water District, Contra Costa Water District, and SSJID or others]

III) Did BBID divert water from June 13 through June 25, 2015, for health and safety needs or for critical power generation? If so, (a) when and for how long did the diversions

occur; (b) what quantity of water was diverted and at what rate; and (c) for what beneficial uses was the water diverted?

9. [placeholder for BBID to propose a stipulation regarding whether it diverted any water from June 13-25, 2015 for health and safety needs or for critical power generation needs.]

SOMACH SIMMONS & DUNN
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW

500 CAPITOL MALL, SUITE 1000, SACRAMENTO, CA 95814
OFFICE: 916-446-7979 FAX: 916-446-8199
SOMACHLAW.COM

September 23, 2015

Via Electronic Mail

Andrew Tauriainen, Attorney III
State Water Resources Control Board
Office of Enforcement
1001 I Street, 16th Floor
Sacramento, CA 95814

Re: BBID ACLC Proposed Stipulation

Dear Mr. Tauriainen:

This letter responds to your September 17, 2015 email regarding the Hearing Officer's requirement that the Byron-Bethany Irrigation District (BBID) and the Prosecution Team meet and confer in advance of the pre-hearing conference regarding the stipulation with respect to specifically enumerated factual issues. While we have now had the opportunity to review the Prosecution Team's proposed Draft Stipulation, BBID is unable to enter into any stipulation at this time.

As you know, in adjudicative proceedings, particularly as significant and fact intensive as Enforcement Proceeding ENF01951 (ENF10951), parties typically discuss stipulations of fact after having had the opportunity to investigate allegations, conduct discovery, and have had an opportunity to confirm facts presented for stipulation. ENF01951 is on expedited schedule. BBID has expressed concern about the limited amount of time between issuance of the Notice of Public Hearing and the date set for commencement of the evidentiary hearing in ENF01951. The Hearing Officer's September 11, 2015 letter, which I did not have time to review until Monday, September 14, provided only one week to agree to a factual stipulation.

BBID has been focusing its efforts on the threshold issue of the availability of water at BBID's point of diversion for the period of June 13 through June 25, 2015, and the significant briefing and legal work associated with the *California Water Curtailment Cases*, Santa Clara Superior Court No. 1-15-CV-285182. Thus, BBID has not had the opportunity to adequately investigate and research the specific categories of facts enumerated in the Hearing Officer's September 11, 2015 letter, and therefore, at this time is unwilling to stipulate to the matters contained in your draft stipulation.

Regarding your Draft Stipulation, I can say generally that BBID is not aware of any gauge called the "Byron Bethany Irrigation District Diversion" Station ID BBI. BBID also believes the diversion figures that the State Water Resources Control Board

(SWRCB) obtained from the California Data Exchange Center (CDEC), contained in Paragraph I of your Draft Stipulation, are incorrect. BBID has not had time to investigate the cause of the apparent error at CDEC, but BBID disputes those figures. Regarding water rights, BBID will not stipulate that it does not possess riparian rights or that it does not possess any other pre-1914 rights outside of Statement 021256. BBID is in the process of investigating these issues, and will not stipulate to the non-existence of water rights.

Your Draft Stipulation also seeks a stipulation that all of BBID's diversions, between June 13 and June 25, 2105, were under BBID's pre-1914 appropriative water right. BBID will not so stipulate. If, in fact, there was sufficient water available for BBID to divert under its pre-1914 appropriative water right from June 13 through June 25, 2015, then it may be that all water diverted by BBID was diverted under that right. If BBID needs to rely on another basis of right, it may assert those rights. As you know, BBID did purchase water on the transfer market in 2015. BBID is not going to forego reliance on any basis of right for the diversion of water between June 13 and June 25, 2015.

BBID's contract with the United States Bureau of Reclamation, Contract No. 14-06-200-785-LTR1, includes Central Valley Project (CVP) water for both "Irrigation" water and for "Municipal and Industrial" water. BBID has received "Municipal and Industrial" water under its contract in 2014 and 2015, and will continue to receive water for the remainder of 2015. Therefore, BBID will not stipulate that it has received "zero water supply" under this contract.

The Hearing Officer's September 11, 2015 letter also directs the parties to consider a stipulation regarding whether BBID diverted water from June 13 through June 25, 2015 for "health and safety needs or for critical power generation." The Draft Stipulation contains a placeholder for a stipulation of facts regarding this issue. BBID is not prepared to stipulate to whether water diverted between June 13 and June 25 was for "health and safety needs or for critical power generation." As a preliminary matter, these terms are undefined and BBID does not know what they mean in the context of ENF01951. Moreover, and as BBID has explained previously, to the extent water was available to divert under BBID's pre-1914 appropriative rights or any other basis of right, I do not know that classifying water as necessary for "health and safety" or critical power generation" is necessary.

Furthermore, and as you likely know, prior to June 12, 2015, representatives of BBID met with Tom Howard, Kathy Mrowka, and John O'Hagan to discuss the provision of water to the community of Mountain House, the Mariposa Energy Project, and the Contra Costa Airport, as well as providing water to Cal Fire as needed for firefighting efforts in the Altamont region in light of impending curtailments. BBID explained to Mr. Howard that it was physically unable to restrict raw water deliveries to

the community of Mountain House without jeopardizing the community-wide fire protection and suppression system in Mountain House. Mr. Howard told BBID that the SWRCB fully expected BBID to continue providing water sufficient to prevent such a catastrophic result to Mountain House, and that the SWRCB would, as it has since done, issue a Compliance Order against Mountain House Community Services District.

Factual circumstances this complicated do not lend themselves to a being resolved in short time frames, and certainly not in time for the pre-hearing conference this Friday. In the event the Hearing Officer provides the parties additional time to prepare for the Public Hearing, BBID will, at the appropriate time, attempt to arrive at a stipulation of facts.

Very truly yours,

Daniel Kelly
General Counsel
Byron-Bethany Irrigation District

DK:yd

cc: Senator Cathleen Galgiani, Senate District 05
(Via electronic mail: senator.galgiani@senate.ca.gov; marian.norris@sen.ca.gov)

Assemblywoman Dr. Susan Talamantes Eggman, District 13
(Via electronic mail: info@susaneggman.com)

Tauriainen, Andrew@Waterboards

From: Dan Kelly <dkelly@somachlaw.com>
Sent: Wednesday, September 23, 2015 3:46 PM
To: Tauriainen, Andrew@Waterboards
Cc: Michael Vergara; Rick Gilmore; marian.norris@sen.ca.gov; senator.galgiani@senate.ca.gov; Assemblymember.Eggman@assembly.ca.gov; Burkin, Christian
Subject: Re: Response to Draft Stipulation

Mr. Tauriainen -

To be clear - there is no such "gauge." That "gauge" is a fiction that DWR created at CDEC - likely to provide some place to report BBID's diversions. It really is that simple.

At some point - we can sit down and talk through some of this. Diversion quantities are what they are - we're just not prepared to stipulate to actual diversions at a gauge that is fictional and to data that we, at the moment, cannot independently verify.

If there is some relief from the tight deadlines we are currently under - there will be more time to talk about possible stipulations. So long as we are being pressed to have written testimony prepared within weeks and an evidentiary hearing in one month - our efforts will need to be focused there.

Regards,
Dan

SOMACH SIMMONS & DUNN
ATTORNEYS AT LAW

Daniel Kelly | *Attorney*

500 Capitol Mall, Suite 1000 | Sacramento, CA 95814
Office 916.446.7979 | **Direct** 916.469-3833 | **Fax** 916.446.8199 | dkelly@somachlaw.com
http://www.somachlaw.com

On Sep 23, 2015, at 2:54 PM, Tauriainen, Andrew@Waterboards <Andrew.Tauriainen@waterboards.ca.gov> wrote:

Thank you. The Prosecution Team understands from your letter that BBID will not entertain discussions regarding stipulations at this time, and that BBID disputes all proposed stipulations including the

existence of the BBID diversion gauge, from which BBID staff reports daily diversions to the Department of Water Resources.

Andrew Tauriainen, Attorney III
State Water Resources Control Board
Office of Enforcement
1001 I Street, 16th Floor
Sacramento, CA 95814
tel: (916) 341-5445
fax: (916) 341-5896
andrew.tauriainen@waterboards.ca.gov

From: Dan Kelly [mailto:dkelly@somachlaw.com]
Sent: Wednesday, September 23, 2015 10:45 AM
To: Tauriainen, Andrew@Waterboards
Cc: Michael Vergara; Rick Gilmore; marian.norris@sen.ca.gov; senator.galgiani@senate.ca.gov; info@susaneggman.com
Subject: Response to Draft Stipulation

Mr. Tauriainen:

Please see the attached letter.

Regards,
Dan Kelly

<image001.gif>

Daniel Kelly | *Attorney*

500 Capitol Mall, Suite 1000 | Sacramento, CA 95814
Office 916.446.7979 | **Direct** 916.469-3833 | **Fax** 916.446.8199 | dkelly@somachlaw.com
http://www.somachlaw.com

<9-23-15 Ltr2ProsecTeamReStip.pdf>

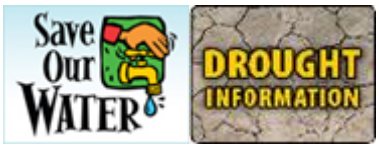
Tauriainen, Andrew@Waterboards

From: Mrowka, Kathy@Waterboards </O=MMS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=MROWKA, KATHY@WATERD1188F18-E359-4DA8-A3F2-FC48F57B907E63A>
Sent: Thursday, July 09, 2015 10:02 AM
To: Wells, Paul@Waterboards
Subject: FW: Curtailments and Voluntary Agreements

Another one for the BBID records.

Katherine Mrowka, Manager
Enforcement Section
Water Rights
P.O. Box 2000
Sacramento, CA 95814

916-341-5363



From: Dan Kelly [mailto:dkelly@somachlaw.com]
Sent: Thursday, May 21, 2015 12:40 PM
To: WB-DWR-deltawatermaster
Cc: Rick Gilmore; Russell Kagehiro; Lauffer, Michael@Waterboards; Howard, Tom; Mrowka, Kathy@Waterboards
Subject: Curtailments and Voluntary Agreements

Michael –

I serve as General Counsel for the Byron-Bethany Irrigation District (BBID). BBID holds pre-1914 water rights in the Delta. Our diversion facilities are located on the intake channel of the State Water Project – relocated to that location because the construction of the SWP (Clifton Court) destroyed our original diversion point. BBID supplies water to the community of Mountain House, provides water to the Mariposa Energy Project (natural gas facility) for emission control, and provides fire protection water to the County Airport – as well as having water on hand for CalFire to use for wildfires in the Altamont Pass areas. Our irrigation customers are nearly all on drip and microsprinkler irrigation – and the District has all but eliminated return flow and runoff.

This morning, BBID's president, Russell Kagehiro, its General Manager, Rick Gilmore, and I met with Kathy Mrowka to talk a bit about curtailments and BBID's efforts to find a practical solution to water supplies for this year. SWRCB Board Member Dee Dee D'Adamo was at BBID last week for a tour, where we explained our desire to work within the water right system and try to participate in solutions to the problem. To that end, we've been working with DWR in trying to develop a back up supply for the remainder of the summer (when and if pre-1914 rights get curtailed) but have not yet found a definitive solution.

A couple of days ago, confirmed by the Workshop yesterday, we learned of an effort underway to reduce riparian water diversions and use in the Delta by 25% as a "voluntary curtailment" of sorts. The purpose of this email is to explore that voluntary effort a bit and see if it has any application to BBID.

We have been monitoring water supply conditions for some time and have some concern over the SWRCB's plan to curtail pre-1914 rights ahead of riparian rights. Here's why: riparian rights only attach to natural flow. Riparians are not entitled to return flows or any foreign or abandoned water – including export water that finds its way back to the Delta. Riparians are likely not entitled to wastewater discharges, groundwater flows present in the system, or other developed supply. Appropriators, however, are entitled to appropriate and divert water from those sources. So – with the very limited natural supply in the system, it is highly likely that there is more water available to appropriators than riparian users – which would mean riparians should be curtailed before pre-1914 appropriators.

Rather than raise these issues in the face of curtailments – BBID would rather attempt to participate in the effort to find practical solutions to the problems we're facing this year and would like to talk with you about the possibility of participating in the effort underway to reduce riparian diversions by 25% in lieu of curtailments.

Here is what BBID is prepared to do. While still not curtailed, BBID is willing to agree to reduce diversions immediately by 25%. Our baseline would be the 2015 demands reported to the SWRCB pursuant to the Informational Order. That number is lower than our recent historic use – but we're willing to cut an additional 25%. Again – the reduction would be immediate – so BBID would forego water it is otherwise entitled to divert in exchange for the ability to divert the reduced amount through the summer.

Our reporting is very transparent. As we diver off the SWP intake channel – our actual diversions are reported *daily* to DWR and the diversion figures are posted on DWR's website. We can provide those figures regularly to the SWRCB to confirm actual reductions in diversions of 25% below our reported demand for this year.

So – we hope to avoid the potentially sticky issue of asserting a paramount right to water present in the system (ahead of riparian users) by reaching an agreement with the SWRCB that will result in real, immediate, measurable water savings while preserving some ability to provide water to the District's customers for the remainder of the summer. If this is something you are interested in discussing – please feel free to contact me or Rick Gilmore.

Regards,
Dan Kelly

SOMACH SIMMONS & DUNN
ATTORNEYS AT LAW

Daniel Kelly | *Attorney*

500 Capitol Mall, Suite 1000 | Sacramento, CA 95814
Office 916.446.7979 | **Direct** 916.469-3833 | **Fax** 916.446.8199 | dkelly@somachlaw.com
http://www.somachlaw.com

prohibited. You are also asked to notify us immediately by telephone at (916) 446-7979 or reply by e-mail and delete or discard the message. Thank you.

SOMACH SIMMONS & DUNN
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW

500 CAPITOL MALL, SUITE 1000, SACRAMENTO, CA 95814
OFFICE: 916-446-7979 FAX: 916-446-8199
SOMACHLAW.COM

July 21, 2015

Andrew Tauriainen, Attorney III
State Water Resources Control Board
Office of Enforcement
1001 I Street, 16th Floor
Sacramento, CA 95814

Re: California Public Records Act Request

Dear Mr. Tauriainen:

Pursuant to the California Public Records Act, California Government Code section 6250 et seq., on behalf of Byron-Bethany Irrigation District (BBID), I hereby request copies of all public records prepared, received, owned, used, or possessed by the State Water Resources Control Board or its staff (collectively referred to herein as SWRCB), relating in any way to Enforcement Action ENF01951 – ADMINISTRATIVE CIVIL LIABILITY COMPLAINT REGARDING UNAUTHORIZED DIVERSION OF WATER FROM THE INTAKE CHANNEL TO THE BANKS PUMPING PLANT (FORMERLY ITALIAN SLOUGH) IN CONTRA COSTA COUNTY (ENF01951). I request all public records as defined in Government Code section 6252(e), which include any "writing" as defined in Government Code section 6252(g)[1].

The public records requested in this letter include, but are not limited to:

1. All public records related in any way to ENF01951.

2. All public records related in any way to the SWRCB's June 12, 2015 "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."

3. All public records related in any way to the statement in the SWRCB's June 12, 2015 "Notice of Unavailability of Water and Need for Immediate Curtailment for Those Diverting Water in the Sacramento-San Joaquin

[1] "Writing" means any handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored.

Watersheds and Delta with a Pre-1914 Appropriative Claim Commencing During or After 1903" that "there is insufficient water in the system to service" the claims of right affected by the Notice.

4. All public records related in any way to the determination by the SWRCB that, as of June 12, 2015, there was insufficient water to satisfy BBID's pre-1914 appropriative water right.

5. All public records, from January 1, 2015 through July 20, 2015, between anyone at the SWRCB and anyone outside of the SWRCB related in any way to BBID's diversion of water and/or ENF01951.

6. All public records, from January 1, 2015 through July 20, 2015, between anyone at the SWRCB and any member of the press, including, but not limited to any newspaper, radio or television broadcast organization related in any way to BBID's diversion of water and/or ENF01951.

7. All public records, from January 1, 2015 through July 20, 2015, between anyone at the SWRCB and anyone at the California Department of Water Resources (DWR) regarding BBID's diversion of water and/or ENF01951.

8. All public records, from January 1, 2015 through July 20, 2015, between anyone within the SWRCB's Enforcement Section and any other employee or member of the SWRCB regarding BBID's diversion of water and/or ENF01951.

9. All public records, from January 1, 2015 through July 20, 2015, between anyone at the SWRCB and anyone at the (DWR) regarding the availability of water in the Sacramento-San Joaquin watersheds and/or the California Delta.

10. All public records related in any way to the "Exceptions to Curtailment" provided for in the SWRCB's June 12, 2015 "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."

11. All public records, from September 1, 2014 through July 20, 2015 related in any way to water availability and any attempt or strategy by the SWRCB to maintain water in any lake, reservoir, or other impoundment in the Sacramento-San Joaquin watershed.

12. All public records, from January 1, 2015 through July 20, 2015, related in any way to water right curtailments and/or water availability. This request also seeks all writings related in any way to the timing or implementation of water

right curtailments and/or notices of unavailability of water under any basis of right.

13. All public records, from January 1, 2015 through July 20, 2015, related in any way to water storage levels in any CVP or SWP storage facility.

14. All public records, from September 1, 2014 through July 20, 2015, related in any way to any agreement for voluntary curtailments or voluntary reductions in diversions. This request also seeks all writings related in any way to the SWRCB's agreement to exercise its enforcement discretion to not take action against any water right holder, diverter, or user of water.

15. All public records related in any way to the Order of the Sacramento Superior Court, dated on or about July 10, 2015, in the matter of *The West Side Irrigation District et al. v. State Water Resources Control Board et al.*, Sacramento Superior Court Case No. 34-2015-800002121. This request includes any internal communications regarding the Court's Order and any communications between any SWRCB employees and anyone outside of the SWRCB.

16. All public records related in any way to the SWRCB's July 15, 2015 PARTIAL RESCISSION OF APRIL, MAY AND JUNE 2015 CURTAILMENT NOTICES AND CLARIFICATION OF STATE WATER BOARD's POSITION RE: NOTICES OF UNAVAILABILITY OF WATER FOR THOSE DIVERTING WATER IN THE SACRAMENTO RIVER WATERSHED, SAN JOAQUIN RIVER WATERSHED AND DELTA, AND SCOTT RIVER.

17. All public records, from January 1, 2013 through July 20, 2015, related in any way to any errors in or comments on the SWRCB's demand analysis or water availability analysis used in determining water availability. This request includes, but is not limited to, comments from engineering and/or water modeling consultants, DWR, or other stakeholders.

18. All public records between the SWRCB and any of the State Water Project Contractors or their representatives related in any way to water right curtailments or water availability, including, but not limited to, the State Water Contractors' Complaint Against Unlawful Diversion of State Water Project Stored Water Supplies, dated on or about June 16, 2015.

19. All public records between the SWRCB and DWR or its representatives related in any way to water right curtailments or water availability, including, but not limited to, the State Water Contractors' Complaint Against Unlawful

Diversion of State Water Project Stored Water Supplies, dated on or about June 16, 2015.

Pursuant to California Government Code section 6253.9, I hereby request that any record that is available in electronic format be provided in electronic format. If any computer programming services are necessary to export the data files into the requested format, and the SWRCB intends to charge for such costs pursuant to Government Code section 6253.9(b), please advise me of such costs immediately.

Please contact me within ten (10) days to let me know if the SWRCB has the requested public records. Should you contend that any of the requested records must be withheld, then under Government Code section 6255 please provide a written response detailing the basis for withholding the record(s). My email address is: dkelly@somachlaw.com.

Very truly yours,

Daniel Kelly

cc: Michael A.M. Lauffer, Chief Counsel, State Water Resources Control Board
(*via electronic mail* michael.lauffer@waterboards.ca.gov)
Rick Gilmore, General Manager, Byron-Bethany Irrigation District
(*via electronic mail r.gilmore@bbid.org*)

SOMACH SIMMONS & DUNN
A Professional Corporation
DANIEL KELLY, ESQ. (SBN 215051)
MICHAEL E. VERGARA, ESQ. (SBN 137689)
500 Capitol Mall, Suite 1000
Sacramento, California 95814-2403
Telephone: (916) 446-7979
Facsimile: (916) 446-8199

Attorneys for Petitioner/Plaintiff BYRON-BETHANY IRRIGATION DISTRICT

BEFORE THE

CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

In the Matter of: Alleged Unauthorized Diversion of Water By Byron-Bethany Irrigation District.	SWRCB Enforcement Action ENF01951 **AMENDED** NOTICE OF DEPOSITION OF BRIAN COATS AND REQUEST FOR PRODUCTION OF DOCUMENTS (Wat. Code, § 1100)

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT, under to Water Code section 1100 and Code of Civil Procedure section 2025.210 et seq., YOU ARE HEREBY NOTIFIED that attorneys for Byron Bethany Irrigation District (BBID) will take the deposition of **Brian Coats on November 12, 2015 at 9:30 a.m.**, continuing day to day until completed. Said deposition will take place at the offices of **Somach Simmons & Dunn, 500 Capitol Mall, Suite 1000, Sacramento, California 95814**.

The deposition of Brian Coats is in regards to the following:

1. Deponent's activities related to the water availability determination at issue in the above-captioned proceeding;

2. Deponent's interaction with other State Water Resource Control Board staff/employees regarding water availability in 2015;

3. Deponent's interaction and discussions with persons outside the State Water

Resources Control Board regarding water availability in 2015;

4. Key issues 1 and 2 as set forth in the State Water Resources Control Board's Notice of Public Hearing in the above-captioned proceeding.

YOU ARE FURTHER NOTIFIED THAT:

The Deponent, Brian Coats, is required to produce at said deposition the documents, records or other materials as set forth in Attachment A to this deposition notice.

Dated: October 27, 2015

SOMACH SIMMONS & DUNN
A Professional Corporation

By: _____
Daniel Kelly
Attorneys for Petitioner/Plaintiff BYRON-BETHANY IRRIGATION DISTRICT

ATTACHMENT A

DOCUMENTS TO BE PRODUCED

1. All WRITINGS, as that term is defined in California Evidence Code section 250, in the possession or control of the State Water Resources Control Board, concerning or relating to the State Water Resources Control Board's determination of water availability in the Sacramento and San Joaquin River Watersheds and the Delta for 2015

2. All WRITINGS, as that term is defined in California Evidence Code section 250, in the possession or control of the State Water Resources Control Board, concerning or relating to water right curtailments in 2015.

3. All WRITINGS, as that term is defined in California Evidence Code section 250, in the possession or control of the State Water Resources Control Board, concerning or relating to the diversion of water by Byron Bethany Irrigation District in 2015.

4. All WRITINGS, as that term is defined in California Evidence Code section 250, in the possession or control of the State Water Resources Control Board, concerning or relating to any exception to water right curtailments in 2015.

All of the above requests seek only those writings not already disclosed through the State Water Resources Control Board's October 12, 2015 response to California Public Records Act requests.

If any document is withheld under a claim of privilege or other protection, please provide a privilege log containing the following information with respect to such documents: (a) an identification of the document with reasonable specificity and particularity, including its nature (memorandum, letter, etc.), title, and date; (b) the parties, individuals, and entities that the communication is between or references; (c) the exact nature of the privilege asserted; and (d) all of the facts upon which your claim of privilege is based or which supports said claim of privilege.

PROOF OF SERVICE

I am employed in the County of Sacramento; my business address is 500 Capitol Mall, Suite 1000, Sacramento, California; I am over the age of 18 years and not a party to the foregoing action.

On October 27, 2015, I served the following document(s):

AMENDED NOTICE OF DEPOSITION OF BRIAN COATS AND REQUEST FOR PRODUCTION OF DOCUMENTS

X (via electronic mail) by causing to be delivered a true copy thereof to the person(s) and at the email addresses set forth below:

SEE ATTACHED SERVICE LIST

I declare under penalty of perjury that the foregoing is true and correct. Executed on October 27, 2015 at Sacramento, California.

Yolanda De La Cruz

SOMACH SIMMONS & DUNN
A Professional Corporation

SERVICE LIST OF PARTICIPANTS
BYRON-BETHANY IRRIGATION DISTRICT
ADMINISTRATIVE CIVIL LIABILITY HEARING
(Revised 9/2/15; Revised: 9/11/15)

VIA ELECTRONIC MAIL 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	**VIA ELECTRONIC MAIL** Byron-Bethany Irrigation District Daniel Kelly Somach Simmons & Dunn 500 Capitol Mall, Suite 1000 Sacramento, CA 95814 dkelly@somachlaw.com
VIA ELECTRONIC MAIL Patterson Irrigation District Banta-Carbona Irrigation District The West Side Irrigation District Jeanne M. Zolezzi Herum\Crabtree\Suntag 5757 Pacific Avenue, Suite 222 Stockton, CA 95207 jzolezzi@herumcrabtree.com	**VIA ELECTRONIC MAIL** City and County of San Francisco Jonathan Knapp Office of the City Attorney 1390 Market Street, Suite 418 San Francisco, CA 94102 jonathan.knapp@sfgov.org
VIA ELECTRONIC MAIL Central Delta Water Agency Jennifer Spaletta Law PC P.O. Box 2660 Lodi, CA 95241 jennifer@spalettalaw.com Dante John Nomellini Daniel A. McDaniel Dante John Nomellini, Jr. NOMELLINI, GRILLI & MCDANIEL 235 East Weber Avenue Stockton, CA 95202 ngmplcs@pacbell.net dantejr@pacbell.net	**VIA ELECTRONIC MAIL** California Department of Water Resources Robin McGinnis, Attorney P.O. Box 942836 Sacramento, CA 94236-0001 robin.mcginnis@water.ca.gov
VIA ELECTRONIC MAIL Richard Morat 2821 Berkshire Way Sacramento, CA 95864 rmorat@gmail.com	**VIA ELECTRONIC MAIL** San Joaquin Tributaries Authority Tim O'Laughlin Valerie C. Kincaid O'Laughlin & Paris LLP 2617 K Street, Suite 100 Sacramento, CA 95816 towater@olaughlinparis.com vkincaid@olaughlinparis.com

VIA ELECTRONIC MAIL	VIA ELECTRONIC MAIL
South Delta Water Agency John Herrick Law Offices of John Herrick 4255 Pacific Avenue, Suite 2 Stockton, CA 95207 Email: Jherrlaw@aol.com	State Water Contractors Stefani Morris 1121 L Street, Suite 1050 Sacramento, CA 95814 smorris@swc.org

SOMACH SIMMONS & DUNN
A Professional Corporation
DANIEL KELLY, ESQ. (SBN 215051)
MICHAEL E. VERGARA, ESQ. (SBN 137689)
500 Capitol Mall, Suite 1000
Sacramento, California 95814-2403
Telephone: (916) 446-7979
Facsimile: (916) 446-8199

Attorneys for Petitioner/Plaintiff BYRON-BETHANY IRRIGATION DISTRICT

BEFORE THE

CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

In the Matter of: Alleged Unauthorized Diversion of Water By Byron-Bethany Irrigation District.	SWRCB Enforcement Action ENF01951 **AMENDED** NOTICE OF DEPOSITION OF JEFF YEAZEL AND REQUEST FOR PRODUCTION OF DOCUMENTS (Wat. Code, § 1100)

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT, under to Water Code section 1100 and Code of Civil Procedure section 2025.210 et seq., YOU ARE HEREBY NOTIFIED that attorneys for Byron Bethany Irrigation District (BBID) will take the deposition of **Jeff Yeazel on November 13, 2015 at 9:30 a.m.**, continuing day to day until completed. Said deposition will take place at the offices of **Somach Simmons & Dunn, 500 Capitol Mall, Suite 1000, Sacramento, California 95814**.

The deposition of Jeff Yeazel is in regards to the following:

1. Deponent's activities related to the water availability determination at issue in the above-captioned proceeding;

2. Deponent's interaction with other State Water Resource Control Board staff/employees regarding water availability in 2015;

3. Deponent's interaction and discussions with persons outside the State Water

Resources Control Board regarding water availability in 2015;

4. Key issues 1 and 2 as set forth in the State Water Resources Control Board's Notice of Public Hearing in the above-captioned proceeding.

YOU ARE FURTHER NOTIFIED THAT:

The Deponent, Jeff Yeazel, is required to produce at said deposition the documents, records or other materials as set forth in Attachment A to this deposition.

Dated: October 27, 2015

SOMACH SIMMONS & DUNN
A Professional Corporation

By:_____
Daniel Kelly
Attorneys for Petitioner/Plaintiff BYRON-BETHANY IRRIGATION DISTRICT

ATTACHMENT A

DOCUMENTS TO BE PRODUCED

1. All WRITINGS, as that term is defined in California Evidence Code section 250, in the possession or control of the State Water Resources Control Board, concerning or relating to the State Water Resources Control Board's determination of water availability in the Sacramento and San Joaquin River Watersheds and the Delta for 2015

2. All WRITINGS, as that term is defined in California Evidence Code section 250, in the possession or control of the State Water Resources Control Board, concerning or relating to water right curtailments in 2015.

3. All WRITINGS, as that term is defined in California Evidence Code section 250, in the possession or control of the State Water Resources Control Board, concerning or relating to the diversion of water by Byron Bethany Irrigation District in 2015.

4. All WRITINGS, as that term is defined in California Evidence Code section 250, in the possession or control of the State Water Resources Control Board, concerning or relating to any exception to water right curtailments in 2015.

All of the above requests seek only those writings not already disclosed through the State Water Resources Control Board's October 12, 2015 response to California Public Records Act requests.

If any document is withheld under a claim of privilege or other protection, please provide a privilege log containing the following information with respect to such documents: (a) an identification of the document with reasonable specificity and particularity, including its nature (memorandum, letter, etc.), title, and date; (b) the parties, individuals, and entities that the communication is between or references; (c) the exact nature of the privilege asserted; and (d) all of the facts upon which your claim of privilege is based or which supports said claim of privilege.

PROOF OF SERVICE

I am employed in the County of Sacramento; my business address is 500 Capitol Mall, Suite 1000, Sacramento, California; I am over the age of 18 years and not a party to the foregoing action.

On October 27, 2015, I served the following document(s):

AMENDED NOTICE OF DEPOSITION OF JEFF YEAZEL AND REQUEST FOR PRODUCTION OF DOCUMENTS

__X__ (**via electronic mail**) by causing to be delivered a true copy thereof to the person(s) and at the email addresses set forth below:

SEE ATTACHED SERVICE LIST

I declare under penalty of perjury that the foregoing is true and correct. Executed on October 27, 2015 at Sacramento, California.

Yolanda De La Cruz

SOMACH SIMMONS & DUNN
A Professional Corporation

SERVICE LIST OF PARTICIPANTS
BYRON-BETHANY IRRIGATION DISTRICT
ADMINISTRATIVE CIVIL LIABILITY HEARING
(Revised 9/2/15; Revised: 9/11/15)

VIA ELECTRONIC MAIL 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	**VIA ELECTRONIC MAIL** Byron-Bethany Irrigation District Daniel Kelly Somach Simmons & Dunn 500 Capitol Mall, Suite 1000 Sacramento, CA 95814 dkelly@somachlaw.com
VIA ELECTRONIC MAIL Patterson Irrigation District Banta-Carbona Irrigation District The West Side Irrigation District Jeanne M. Zolezzi Herum\Crabtree\Suntag 5757 Pacific Avenue, Suite 222 Stockton, CA 95207 jzolezzi@herumcrabtree.com	**VIA ELECTRONIC MAIL** City and County of San Francisco Jonathan Knapp Office of the City Attorney 1390 Market Street, Suite 418 San Francisco, CA 94102 jonathan.knapp@sfgov.org
VIA ELECTRONIC MAIL Central Delta Water Agency Jennifer Spaletta Law PC P.O. Box 2660 Lodi, CA 95241 jennifer@spalettalaw.com Dante John Nomellini Daniel A. McDaniel Dante John Nomellini, Jr. NOMELLINI, GRILLI & MCDANIEL 235 East Weber Avenue Stockton, CA 95202 ngmplcs@pacbell.net dantejr@pacbell.net	**VIA ELECTRONIC MAIL** California Department of Water Resources Robin McGinnis, Attorney P.O. Box 942836 Sacramento, CA 94236-0001 robin.mcginnis@water.ca.gov
VIA ELECTRONIC MAIL Richard Morat 2821 Berkshire Way Sacramento, CA 95864 rmorat@gmail.com	**VIA ELECTRONIC MAIL** San Joaquin Tributaries Authority Tim O'Laughlin Valerie C. Kincaid O'Laughlin & Paris LLP 2617 K Street, Suite 100 Sacramento, CA 95816 towater@olaughlinparis.com vkincaid@olaughlinparis.com

VIA ELECTRONIC MAIL	VIA ELECTRONIC MAIL
South Delta Water Agency John Herrick Law Offices of John Herrick 4255 Pacific Avenue, Suite 2 Stockton, CA 95207 Email: Jherrlaw@aol.com	State Water Contractors Stefani Morris 1121 L Street, Suite 1050 Sacramento, CA 95814 smorris@swc.org

SOMACH SIMMONS & DUNN
A Professional Corporation
DANIEL KELLY, ESQ. (SBN 215051)
MICHAEL E. VERGARA, ESQ. (SBN 137689)
500 Capitol Mall, Suite 1000
Sacramento, California 95814-2403
Telephone: (916) 446-7979
Facsimile: (916) 446-8199

Attorneys for Petitioner/Plaintiff BYRON-BETHANY IRRIGATION DISTRICT

BEFORE THE

CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

In the Matter of: Alleged Unauthorized Diversion of Water By Byron-Bethany Irrigation District.	SWRCB Enforcement Action ENF01951 **AMENDED** NOTICE OF DEPOSITION OF KATHY MROWKA AND REQUEST FOR PRODUCTION OF DOCUMENTS (Wat. Code, § 1100)

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT, under to Water Code section 1100 and Code of Civil Procedure section 2025.210 et seq., YOU ARE HEREBY NOTIFIED that attorneys for Byron Bethany Irrigation District (BBID) will take the deposition of **Kathy Mrowka on November 16, 2015 at 9:30 a.m.**, continuing day to day until completed. Said deposition will take place at the offices of **Somach Simmons & Dunn, 500 Capitol Mall, Suite 1000, Sacramento, California 95814**.

The deposition of Kathy Mrowka is in regards to the following:

1. Deponent's activities related to the water availability determination at issue in the above-captioned proceeding;

2. Deponent's interaction with other State Water Resource Control Board staff/employees regarding water availability in 2015;

3. Deponent's interaction and discussions with persons outside the State Water

Resources Control Board regarding water availability in 2015;

4. Key issues 1 and 2 as set forth in the State Water Resources Control Board's Notice of Public Hearing in the above-captioned proceeding.

YOU ARE FURTHER NOTIFIED THAT:

The Deponent, Kathy Mrowka, is required to produce at said deposition the documents, records or other materials as set forth in Attachment A to this deposition notice.

Dated: October 27, 2015

SOMACH SIMMONS & DUNN
A Professional Corporation

By:_____
Daniel Kelly
Attorneys for Petitioner/Plaintiff BYRON-BETHANY IRRIGATION DISTRICT

ATTACHMENT A

DOCUMENTS TO BE PRODUCED

1. All WRITINGS, as that term is defined in California Evidence Code section 250, in the possession or control of the State Water Resources Control Board, concerning or relating to the State Water Resources Control Board's determination of water availability in the Sacramento and San Joaquin River Watersheds and the Delta for 2015

2. All WRITINGS, as that term is defined in California Evidence Code section 250, in the possession or control of the State Water Resources Control Board, concerning or relating to water right curtailments in 2015.

3. All WRITINGS, as that term is defined in California Evidence Code section 250, in the possession or control of the State Water Resources Control Board, concerning or relating to the diversion of water by Byron Bethany Irrigation District in 2015.

4. All WRITINGS, as that term is defined in California Evidence Code section 250, in the possession or control of the State Water Resources Control Board, concerning or relating to any exception to water right curtailments in 2015.

All of the above requests seek only those writings not already disclosed through the State Water Resources Control Board's October 12, 2015 response to California Public Records Act requests.

If any document is withheld under a claim of privilege or other protection, please provide a privilege log containing the following information with respect to such documents: (a) an identification of the document with reasonable specificity and particularity, including its nature (memorandum, letter, etc.), title, and date; (b) the parties, individuals, and entities that the communication is between or references; (c) the exact nature of the privilege asserted; and (d) all of the facts upon which your claim of privilege is based or which supports said claim of privilege.

PROOF OF SERVICE

I am employed in the County of Sacramento; my business address is 500 Capitol Mall, Suite 1000, Sacramento, California; I am over the age of 18 years and not a party to the foregoing action.

On October 27, 2015, I served the following document(s):

AMENDED NOTICE OF DEPOSITION OF KATHY MROWKA AND REQUEST FOR PRODUCTION OF DOCUMENTS

X (**via electronic mail**) by causing to be delivered a true copy thereof to the person(s) and at the email addresses set forth below:

SEE ATTACHED SERVICE LIST

I declare under penalty of perjury that the foregoing is true and correct. Executed on October 27, 2015 at Sacramento, California.

Yolanda De La Cruz

SOMACH SIMMONS & DUNN
A Professional Corporation

SERVICE LIST OF PARTICIPANTS
BYRON-BETHANY IRRIGATION DISTRICT
ADMINISTRATIVE CIVIL LIABILITY HEARING
(Revised 9/2/15; Revised: 9/11/15)

VIA ELECTRONIC MAIL 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	**VIA ELECTRONIC MAIL** Byron-Bethany Irrigation District Daniel Kelly Somach Simmons & Dunn 500 Capitol Mall, Suite 1000 Sacramento, CA 95814 dkelly@somachlaw.com
VIA ELECTRONIC MAIL Patterson Irrigation District Banta-Carbona Irrigation District The West Side Irrigation District Jeanne M. Zolezzi Herum\Crabtree\Suntag 5757 Pacific Avenue, Suite 222 Stockton, CA 95207 jzolezzi@herumcrabtree.com	**VIA ELECTRONIC MAIL** City and County of San Francisco Jonathan Knapp Office of the City Attorney 1390 Market Street, Suite 418 San Francisco, CA 94102 jonathan.knapp@sfgov.org
VIA ELECTRONIC MAIL Central Delta Water Agency Jennifer Spaletta Law PC P.O. Box 2660 Lodi, CA 95241 jennifer@spalettalaw.com Dante John Nomellini Daniel A. McDaniel Dante John Nomellini, Jr. NOMELLINI, GRILLI & MCDANIEL 235 East Weber Avenue Stockton, CA 95202 ngmplcs@pacbell.net dantejr@pacbell.net	**VIA ELECTRONIC MAIL** California Department of Water Resources Robin McGinnis, Attorney P.O. Box 942836 Sacramento, CA 94236-0001 robin.mcginnis@water.ca.gov
VIA ELECTRONIC MAIL Richard Morat 2821 Berkshire Way Sacramento, CA 95864 rmorat@gmail.com	**VIA ELECTRONIC MAIL** San Joaquin Tributaries Authority Tim O'Laughlin Valerie C. Kincaid O'Laughlin & Paris LLP 2617 K Street, Suite 100 Sacramento, CA 95816 towater@olaughlinparis.com vkincaid@olaughlinparis.com

VIA ELECTRONIC MAIL	VIA ELECTRONIC MAIL
South Delta Water Agency John Herrick Law Offices of John Herrick 4255 Pacific Avenue, Suite 2 Stockton, CA 95207 Email: Jherrlaw@aol.com	State Water Contractors Stefani Morris 1121 L Street, Suite 1050 Sacramento, CA 95814 smorris@swc.org

SOMACH SIMMONS & DUNN
A Professional Corporation
DANIEL KELLY, ESQ. (SBN 215051)
MICHAEL E. VERGARA, ESQ. (SBN 137689)
500 Capitol Mall, Suite 1000
Sacramento, California 95814-2403
Telephone: (916) 446-7979
Facsimile: (916) 446-8199

Attorneys for Petitioner/Plaintiff BYRON-BETHANY IRRIGATION DISTRICT

BEFORE THE

CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

In the Matter of: Alleged Unauthorized Diversion of Water By Byron-Bethany Irrigation District.	SWRCB Enforcement Action ENF01951 NOTICE OF DEPOSITION OF THOMAS HOWARD AND REQUEST FOR PRODUCTION OF DOCUMENTS (Wat. Code, § 1100)

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT, under to Water Code section 1100 and Code of Civil Procedure section 2025.210 et seq., YOU ARE HEREBY NOTIFIED that attorneys for Byron Bethany Irrigation District (BBID) will take the deposition of **Thomas Howard on November 19, 2015 at 8:00 a.m.** Said deposition will take place at the offices of **Somach Simmons & Dunn, 500 Capitol Mall, Suite 1000, Sacramento, California 95814**.

If, for any reason, the taking of said deposition is not completed on November 19, 2015, the deposition will be continued, at the option of the noticing party., on November 25, 2015 at 8:00 a.m. at the same place until completed. Notice is further given that under Code of Civil Procedure Section 2025.330 the deposition testimony may be recorded by video technology.

The deposition of Thomas Howard is in regards to the following:

1. Deponent's activities related to the water availability determination at issue in the above-captioned proceeding;

2. Deponent's interaction with other State Water Resource Control Board staff/employees regarding water availability in 2015;

3. Deponent's interaction and discussions with persons outside the State Water Resources Control Board regarding water availability in 2015;

4. Key issues 1 and 2 as set forth in the State Water Resources Control Board's Notice of Public Hearing in the above-captioned proceeding.

YOU ARE FURTHER NOTIFIED THAT:

The Deponent, Thomas Howard is required to produce at said deposition the documents, records or other materials as set forth in Attachment A to this deposition notice.

Dated: October 29, 2015

SOMACH SIMMONS & DUNN
A Professional Corporation

By:_____
Daniel Kelly
Attorneys for Petitioner/Plaintiff BYRON-BETHANY IRRIGATION DISTRICT

ATTACHMENT A

DOCUMENTS TO BE PRODUCED

1. All WRITINGS, as that term is defined in California Evidence Code section 250, in the possession or control of the State Water Resources Control Board, concerning or relating to the State Water Resources Control Board's determination of water availability in the Sacramento and San Joaquin River Watersheds and the Delta for 2015

2. All WRITINGS, as that term is defined in California Evidence Code section 250, in the possession or control of the State Water Resources Control Board, concerning or relating to water right curtailments in 2015.

3. All WRITINGS, as that term is defined in California Evidence Code section 250, in the possession or control of the State Water Resources Control Board, concerning or relating to the diversion of water by Byron Bethany Irrigation District in 2015.

4. All WRITINGS, as that term is defined in California Evidence Code section 250, in the possession or control of the State Water Resources Control Board, concerning or relating to any exception to water right curtailments in 2015.

All of the above requests seek only those writings not already disclosed through the State Water Resources Control Board's October 12, 2015 response to California Public Records Act requests.

If any document is withheld under a claim of privilege or other protection, please provide a privilege log containing the following information with respect to such documents: (a) an identification of the document with reasonable specificity and particularity, including its nature (memorandum, letter, etc.), title, and date; (b) the parties, individuals, and entities that the communication is between or references; (c) the exact nature of the privilege asserted; and (d) all of the facts upon which your claim of privilege is based or which supports said claim of privilege.

PROOF OF SERVICE

I am employed in the County of Sacramento; my business address is 500 Capitol Mall, Suite 1000, Sacramento, California; I am over the age of 18 years and not a party to the foregoing action.

On October 29, 2015, I served the following document(s):

NOTICE OF DEPOSITION OF THOMAS HOWARD AND REQUEST FOR PRODUCTION OF DOCUMENTS

__X__ **(via electronic mail)** by causing to be delivered a true copy thereof to the person(s) and at the email addresses set forth below:

SEE ATTACHED SERVICE LIST

I declare under penalty of perjury that the foregoing is true and correct. Executed on October 29, 2015 at Sacramento, California.

Yolanda De La Cruz

SOMACH SIMMONS & DUNN
A Professional Corporation

SERVICE LIST OF PARTICIPANTS
BYRON-BETHANY IRRIGATION DISTRICT
ADMINISTRATIVE CIVIL LIABILITY HEARING
(Revised 9/2/15; Revised: 9/11/15)

VIA ELECTRONIC MAIL 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	**VIA ELECTRONIC MAIL** Byron-Bethany Irrigation District Daniel Kelly Somach Simmons & Dunn 500 Capitol Mall, Suite 1000 Sacramento, CA 95814 dkelly@somachlaw.com
VIA ELECTRONIC MAIL Patterson Irrigation District Banta-Carbona Irrigation District The West Side Irrigation District Jeanne M. Zolezzi Herum\Crabtree\Suntag 5757 Pacific Avenue, Suite 222 Stockton, CA 95207 jzolezzi@herumcrabtree.com	**VIA ELECTRONIC MAIL** City and County of San Francisco Jonathan Knapp Office of the City Attorney 1390 Market Street, Suite 418 San Francisco, CA 94102 jonathan.knapp@sfgov.org
VIA ELECTRONIC MAIL Central Delta Water Agency Jennifer Spaletta Law PC P.O. Box 2660 Lodi, CA 95241 jennifer@spalettalaw.com Dante John Nomellini Daniel A. McDaniel Dante John Nomellini, Jr. NOMELLINI, GRILLI & MCDANIEL 235 East Weber Avenue Stockton, CA 95202 ngmplcs@pacbell.net dantejr@pacbell.net	**VIA ELECTRONIC MAIL** California Department of Water Resources Robin McGinnis, Attorney P.O. Box 942836 Sacramento, CA 94236-0001 robin.mcginnis@water.ca.gov
VIA ELECTRONIC MAIL Richard Morat 2821 Berkshire Way Sacramento, CA 95864 rmorat@gmail.com	**VIA ELECTRONIC MAIL** San Joaquin Tributaries Authority Tim O'Laughlin Valerie C. Kincaid O'Laughlin & Paris LLP 2617 K Street, Suite 100 Sacramento, CA 95816 towater@olaughlinparis.com vkincaid@olaughlinparis.com

VIA ELECTRONIC MAIL	VIA ELECTRONIC MAIL
South Delta Water Agency John Herrick Law Offices of John Herrick 4255 Pacific Avenue, Suite 2 Stockton, CA 95207 Email: Jherrlaw@aol.com	State Water Contractors Stefani Morris 1121 L Street, Suite 1050 Sacramento, CA 95814 smorris@swc.org

SOMACH SIMMONS & DUNN
A Professional Corporation
DANIEL KELLY, ESQ. (SBN 215051)
MICHAEL E. VERGARA, ESQ. (SBN 137689)
500 Capitol Mall, Suite 1000
Sacramento, California 95814-2403
Telephone: (916) 446-7979
Facsimile: (916) 446-8199

Attorneys for Petitioner/Plaintiff BYRON-BETHANY IRRIGATION DISTRICT

BEFORE THE

CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

In the Matter of: Alleged Unauthorized Diversion of Water By Byron-Bethany Irrigation District.	SWRCB Enforcement Action ENF01951 NOTICE OF DEPOSITION OF JOHN O'HAGAN AND REQUEST FOR PRODUCTION OF DOCUMENTS (Wat. Code, § 1100)

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT, under to Water Code section 1100 and Code of Civil Procedure section 2025.210 et seq., YOU ARE HEREBY NOTIFIED that attorneys for Byron Bethany Irrigation District (BBID) will take the deposition of **John O'Hagan on November 19, 2015 at 12:00 p.m.** and continue thereafter on November 20, 2015. Said deposition will take place at the offices of **Somach Simmons & Dunn, 500 Capitol Mall, Suite 1000, Sacramento, California 95814**.

The deposition of John O'Hagan is in regards to the following:

1. Deponent's activities related to the water availability determination at issue in the above-captioned proceeding;

2. Deponent's interaction with other State Water Resource Control Board staff/employees regarding water availability in 2015;

3. Deponent's interaction and discussions with persons outside the State Water

Resources Control Board regarding water availability in 2015;

4. Key issues 1 and 2 as set forth in the State Water Resources Control Board's Notice of Public Hearing in the above-captioned proceeding.

YOU ARE FURTHER NOTIFIED THAT:

The Deponent John O'Hagan is required to produce at said deposition the documents, records or other materials as set forth in Attachment A to this deposition notice.

Dated: November 10, 2015

SOMACH SIMMONS & DUNN
A Professional Corporation

By: _____
Daniel Kelly
Attorneys for Petitioner/Plaintiff BYRON-BETHANY IRRIGATION DISTRICT

ATTACHMENT A

DOCUMENTS TO BE PRODUCED

1. All WRITINGS, as that term is defined in California Evidence Code section 250, in the possession or control of the State Water Resources Control Board, concerning or relating to the State Water Resources Control Board's determination of water availability or lack thereof to satisfy the Byron-Bethany Irrigation District's pre-1914 appropriative water right.

2. All WRITINGS, as that term is defined in California Evidence Code section 250, in the possession or control of the State Water Resources Control Board, concerning or relating to water right curtailments in 2015.

3. All WRITINGS, as that term is defined in California Evidence Code section 250, in the possession or control of the State Water Resources Control Board, concerning or relating to the diversion of water by Byron Bethany Irrigation District in 2015.

4. All WRITINGS, as that term is defined in California Evidence Code section 250, in the possession or control of the State Water Resources Control Board, concerning or relating to any exception to water right curtailments in 2015.

5. All WRITINGS, as that term is defined in California Evidence Code section 250, in the possession or control of the State Water Resources Control Board, concerning or relating to any communications with the California Department of Water Resources or any of its employees or agents regarding the diversion of water by Byron Bethany Irrigation District in 2015.

6. All WRITINGS, as that term is defined in California Evidence Code section 250, in the possession or control of the State Water Resources Control Board, concerning or relating to any communications with the State Water Contractors or any of its employees or agents regarding the diversion of water by Byron Bethany Irrigation District in 2015.

6. All WRITINGS, as that term is defined in California Evidence Code section 250, in the possession or control of the State Water Resources Control Board, concerning or relating to any communications with the Metropolitan Water District of Southern California or any of its employees or agents regarding the diversion of water by Byron Bethany Irrigation District in 2015.

8. All WRITINGS, as that term is defined in California Evidence Code section 250, in the possession or control of the State Water Resources Control Board, concerning or relating to any communications with the Delta Watermaster or anyone in the Office of Delta Watermaster regarding the diversion of water by Byron Bethany Irrigation District in 2015.

9. All WRITINGS, as that term is defined in California Evidence Code section 250, in the possession or control of the State Water Resources Control Board, concerning or relating to any communications between anyone in the State Water Resources Control Board's Office of Enforcement and anyone in the State Water Resources Control Board's Executive Office regarding the diversion of water by Byron Bethany Irrigation District in 2015.

10. All WRITINGS, as that term is defined in California Evidence Code section 250, in the possession or control of the State Water Resources Control Board, concerning or relating to any communications between anyone in the State Water Resources Control Board's Office of Enforcement and anyone in the State Water Resources Control Board's Executive Office regarding water availability in 2015.

11. All WRITINGS, as that term is defined in California Evidence Code section 250, in the possession or control of the State Water Resources Control Board, concerning or relating to any communications between anyone in the State Water Resources Control Board's Office of Enforcement and anyone in the State Water Resources Control Board's Executive Office regarding water right curtailments in 2015.

12. All WRITINGS, as that term is defined in California Evidence Code section 250, in the possession or control of the State Water Resources Control Board, concerning or relating to any communications between anyone in the State Water Resources Control Board's Office of Enforcement and anyone in the State Water Resources Control Board's Executive Office regarding the diversion of water in the California Delta in 2015.

All of the above requests seek only those writings not already disclosed through the State Water Resources Control Board's October 12, 2015 response to California Public Records Act requests.

If any document is withheld under a claim of privilege or other protection, please provide a privilege log containing the following information with respect to such documents: (a) an identification of the document with reasonable specificity and particularity, including its nature (memorandum, letter, etc.), title, and date; (b) the parties, individuals, and entities that the communication is between or references; (c) the exact nature of the privilege asserted; and (d) all of the facts upon which your claim of privilege is based or which supports said claim of privilege.

PROOF OF SERVICE

I am employed in the County of Sacramento; my business address is 500 Capitol Mall, Suite 1000, Sacramento, California; I am over the age of 18 years and not a party to the foregoing action.

On November 10, 2015, I served the following document(s):

NOTICE OF DEPOSITION OF JOHN O'HAGAN AND REQUEST FOR PRODUCTION OF DOCUMENTS

__X__ (**via electronic mail**) by causing to be delivered a true copy thereof to the person(s) and at the email addresses set forth below:

SEE ATTACHED SERVICE LIST

I declare under penalty of perjury that the foregoing is true and correct. Executed on November 10, 2015 at Sacramento, California.

Yolanda De La Cruz

SOMACH SIMMONS & DUNN
A Professional Corporation

SERVICE LIST OF PARTICIPANTS
BYRON-BETHANY IRRIGATION DISTRICT
ADMINISTRATIVE CIVIL LIABILITY HEARING
(Revised 9/2/15; Revised: 9/11/15)

VIA ELECTRONIC MAIL 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	**VIA ELECTRONIC MAIL** Byron-Bethany Irrigation District Daniel Kelly Somach Simmons & Dunn 500 Capitol Mall, Suite 1000 Sacramento, CA 95814 dkelly@somachlaw.com
VIA ELECTRONIC MAIL Patterson Irrigation District Banta-Carbona Irrigation District The West Side Irrigation District Jeanne M. Zolezzi Herum\Crabtree\Suntag 5757 Pacific Avenue, Suite 222 Stockton, CA 95207 jzolezzi@herumcrabtree.com	**VIA ELECTRONIC MAIL** City and County of San Francisco Jonathan Knapp Office of the City Attorney 1390 Market Street, Suite 418 San Francisco, CA 94102 jonathan.knapp@sfgov.org
VIA ELECTRONIC MAIL Central Delta Water Agency Jennifer Spaletta Law PC P.O. Box 2660 Lodi, CA 95241 jennifer@spalettalaw.com Dante John Nomellini Daniel A. McDaniel Dante John Nomellini, Jr. NOMELLINI, GRILLI & MCDANIEL 235 East Weber Avenue Stockton, CA 95202 ngmplcs@pacbell.net dantejr@pacbell.net	**VIA ELECTRONIC MAIL** California Department of Water Resources Robin McGinnis, Attorney P.O. Box 942836 Sacramento, CA 94236-0001 robin.mcginnis@water.ca.gov
VIA ELECTRONIC MAIL Richard Morat 2821 Berkshire Way Sacramento, CA 95864 rmorat@gmail.com	**VIA ELECTRONIC MAIL** San Joaquin Tributaries Authority Tim O'Laughlin Valerie C. Kincaid O'Laughlin & Paris LLP 2617 K Street, Suite 100 Sacramento, CA 95816 towater@olaughlinparis.com vkincaid@olaughlinparis.com

VIA ELECTRONIC MAIL	VIA ELECTRONIC MAIL
South Delta Water Agency John Herrick Law Offices of John Herrick 4255 Pacific Avenue, Suite 2 Stockton, CA 95207 Email: Jherrlaw@aol.com	State Water Contractors Stefani Morris 1121 L Street, Suite 1050 Sacramento, CA 95814 smorris@swc.org

SOMACH SIMMONS & DUNN
A Professional Corporation
DANIEL KELLY, ESQ. (SBN 215051)
MICHAEL E. VERGARA, ESQ. (SBN 137689)
500 Capitol Mall, Suite 1000
Sacramento, California 95814-2403
Telephone: (916) 446-7979
Facsimile: (916) 446-8199

Attorneys for Petitioner/Plaintiff BYRON-BETHANY IRRIGATION DISTRICT

BEFORE THE

CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

In the Matter of: Alleged Unauthorized Diversion of Water By Byron-Bethany Irrigation District.	SWRCB Enforcement Action ENF01951 NOTICE OF DEPOSITION OF PAUL MARSHALL AND REQUEST FOR PRODUCTION OF DOCUMENTS (Wat. Code, § 1100)

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT, under to Water Code section 1100 and Code of Civil Procedure section 2025.210 et seq., YOU ARE HEREBY NOTIFIED that attorneys for Byron Bethany Irrigation District (BBID) will take the deposition of **Paul Marshall on November 24, 2015 at 9:30 a.m.** Said deposition will take place at the offices of **Somach Simmons & Dunn, 500 Capitol Mall, Suite 1000, Sacramento, California 95814**.

The deposition of Paul Marshall is in regards to the following:

1. The effect of Delta diversions;
2. State Water Project operations in June 2015;
3. The operation of Clifton Court forebay and related facilities;
4. Deponent's interaction with State Water Resource Control Board staff/employees regarding water availability in 2015.

/ / /

YOU ARE FURTHER NOTIFIED THAT:

The Deponent, Paul Marshall is required to produce at said deposition the documents, records or other materials as set forth in Attachment A to this deposition notice.

Dated: November 9, 2015

SOMACH SIMMONS & DUNN
A Professional Corporation

By:_____
Daniel Kelly
Attorneys for Petitioner/Plaintiff BYRON-BETHANY IRRIGATION DISTRICT

PROOF OF SERVICE

I am employed in the County of Sacramento; my business address is 500 Capitol Mall, Suite 1000, Sacramento, California; I am over the age of 18 years and not a party to the foregoing action.

On November 9, 2015, I served the following document(s):

NOTICE OF DEPOSITION OF PAUL MARSHALL AND REQUEST FOR PRODUCTION OF DOCUMENTS

X (**via electronic mail**) by causing to be delivered a true copy thereof to the person(s) and at the email addresses set forth below:

SEE ATTACHED SERVICE LIST

I declare under penalty of perjury that the foregoing is true and correct. Executed on November 9, 2015 at Sacramento, California.

Yolanda De La Cruz

SOMACH SIMMONS & DUNN
A Professional Corporation

SERVICE LIST OF PARTICIPANTS
BYRON-BETHANY IRRIGATION DISTRICT
ADMINISTRATIVE CIVIL LIABILITY HEARING
(Revised 9/2/15; Revised: 9/11/15)

VIA ELECTRONIC MAIL 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	**VIA ELECTRONIC MAIL** Byron-Bethany Irrigation District Daniel Kelly Somach Simmons & Dunn 500 Capitol Mall, Suite 1000 Sacramento, CA 95814 dkelly@somachlaw.com
VIA ELECTRONIC MAIL Patterson Irrigation District Banta-Carbona Irrigation District The West Side Irrigation District Jeanne M. Zolezzi Herum\Crabtree\Suntag 5757 Pacific Avenue, Suite 222 Stockton, CA 95207 jzolezzi@herumcrabtree.com	**VIA ELECTRONIC MAIL** City and County of San Francisco Jonathan Knapp Office of the City Attorney 1390 Market Street, Suite 418 San Francisco, CA 94102 jonathan.knapp@sfgov.org
VIA ELECTRONIC MAIL Central Delta Water Agency Jennifer Spaletta Law PC P.O. Box 2660 Lodi, CA 95241 jennifer@spalettalaw.com Dante John Nomellini Daniel A. McDaniel Dante John Nomellini, Jr. NOMELLINI, GRILLI & MCDANIEL 235 East Weber Avenue Stockton, CA 95202 ngmplcs@pacbell.net dantejr@pacbell.net	**VIA ELECTRONIC MAIL** California Department of Water Resources Robin McGinnis, Attorney P.O. Box 942836 Sacramento, CA 94236-0001 robin.mcginnis@water.ca.gov
VIA ELECTRONIC MAIL Richard Morat 2821 Berkshire Way Sacramento, CA 95864 rmorat@gmail.com	**VIA ELECTRONIC MAIL** San Joaquin Tributaries Authority Tim O'Laughlin Valerie C. Kincaid O'Laughlin & Paris LLP 2617 K Street, Suite 100 Sacramento, CA 95816 towater@olaughlinparis.com vkincaid@olaughlinparis.com

VIA ELECTRONIC MAIL	VIA ELECTRONIC MAIL
South Delta Water Agency John Herrick Law Offices of John Herrick 4255 Pacific Avenue, Suite 2 Stockton, CA 95207 Email: Jherrlaw@aol.com	State Water Contractors Stefani Morris 1121 L Street, Suite 1050 Sacramento, CA 95814 smorris@swc.org

ATTACHMENT A

DOCUMENTS TO BE PRODUCED

1. All WRITINGS, as that term is defined in California Evidence Code section 250, in the possession or control of the California Department of Water Resources, concerning or relating to the State Water Resources Control Board's determination of water availability in the Sacramento and San Joaquin River Watersheds and the Delta for 2015

2. All WRITINGS, as that term is defined in California Evidence Code section 250, in the possession or control of the California Department of Water Resources, concerning or relating to water right curtailments in 2015.

3. All WRITINGS, as that term is defined in California Evidence Code section 250, in the possession or control of the California Department of Water Resources, concerning or relating to the diversion of water by Byron Bethany Irrigation District in 2015.

4. All WRITINGS, as that term is defined in California Evidence Code section 250, in the possession or control of the California Department of Water Resources, concerning or relating to the operation of Clifton Court forebay and related facilities in June 2015.

5. All WRITINGS, as that term is defined in California Evidence Code section 250, in the possession or control of the California Department of Water Resources, concerning or relating to any inspections, aerial or otherwise, of lands or facilities within the Byron-Bethany Irrigation District during the 2015 irrigation season. This request includes all WRITINGS regarding aerial inspection or observation of Byron-Bethany Irrigation District facilities via helicopter or other vehicle.

6. All WRITINGS as that term is defined in California Evidence Code section 250, in the possession or control of the California Department of Water Resources, concerning or relating to the source of water in Clifton Court forebay during June 2015 and the source of water diverted by the California Department of Water Resources at Banks Pumping Plant in June 2015.

If any document is withheld under a claim of privilege or other protection, please provide a privilege log containing the following information with respect to such documents: (a) an identification of the document with reasonable specificity and particularity, including its nature (memorandum, letter, etc.), title, and date; (b) the parties, individuals, and entities that the communication is between or references; (c) the exact nature of the privilege asserted; and (d) all of the facts upon which your claim of privilege is based or which supports said claim of privilege.

BEFORE THE STATE WATER RESOURCES CONTROL BOARD OF THE STATE OF CALIFORNIA

ATTORNEY OR PARTY WITHOUT ATTORNEY REQUESTING SUBPOENA *(name, address, and telephone no.)*:	FOR STATE WATER BOARD USE ONLY
Andrew Tauriainen, SBN 214837 SWRCB Office of Enforcement 1001 I Street, 16th Floor Sacramento, CA 95814 (916) 341-5445 REPRESENTING: Division of Water Rights Prosecution Team	
TITLE OF THE PROCEEDING: *In re: the Matter of Administrative Civil Liability Complaint Against Byron-Bethany Irrigation District*	
☐ SUBPOENA ☐ RE HEARING ☑ SUBPOENA DUCES TECUM ☐ RE DEPOSITION	

THE PEOPLE OF THE STATE OF CALIFORNIA, TO *(name)*: Byron-Bethany Irrigation District

1. **YOU ARE ORDERED TO APPEAR AS A WITNESS in this proceeding as follows unless you make special agreement with the person named in item 3:**

a. Date: November 13, 2015 Time: 12:00 noon

b. Address: Via electronic submittal (see attached Addendum)

2. **AND YOU ARE:**

a. ☐ Ordered to appear in person. (Wat. Code, § 1080; Gov. Code, § 11450.10; Cal. Code Regs., tit. 23, § 649.6(a).)

b. ☑ Not required to appear in person if you produce the records described in the accompanying affidavit in compliance with Evidence Code sections 1560 and 1561. (Wat. Code, § 1080; Gov. Code, § 11450.10(b); Cal. Code Regs., tit. 23, § 649.6(a).)

c. ☐ Ordered to appear in person and to produce the records described in the accompanying affidavit. The personal attendance of the custodian or other qualified witness and the production of the original records is required by this subpoena. The procedure authorized by subdivision (b) of section 1560, and sections 1561 and 1562, of the Evidence Code will not be deemed sufficient compliance with this subpoena. (Wat. Code, § 1080; Gov. Code, § 11450.10; Cal. Code Regs., tit. 23, § 649.6(a).)

3. **IF YOU HAVE ANY QUESTIONS ABOUT WITNESS FEES OR THE TIME OR DATE FOR YOU TO APPEAR, OR IF YOU WANT TO BE CERTAIN THAT YOUR PRESENCE IS REQUIRED, CONTACT THE FOLLOWING PERSON BEFORE THE DATE ON WHICH YOU ARE TO APPEAR:**

a. Name: Andrew Tauriainen b. Telephone number: (916) 341-5445

(Gov. Code, § 11450.20(a); Code Civ. Proc., § 1985.2.)

4. **WITNESS FEES: You are entitled to witness fees and mileage actually traveled, both ways, as provided by law. Request them from the person who serves this subpoena or from the person named in item 3.** (Wat. Code, §§ 1081, 1083, 1084; Gov. Code, §§ 11450.40, 68070 et seq.; Code Civ. Proc., §§ 1986.5, 2065.)

5. **If you object to the terms of this subpoena, you may file a motion for a protective order including a motion to quash with the hearing officer assigned to your case. Motions must be made within a reasonable period after receipt of the subpoena, and shall be made with written notice to all parties, with proof of service upon all parties attached. In response to your motion, the hearing officer may make an order quashing the subpoena entirely, modifying it, or directing compliance with it, or may make any order needed to protect the parties or witnesses from unreasonable or oppressive demands, including unreasonable violations of the right to privacy.** (Gov. Code, § 11450.30.) (Send motions to: The State Water Resources Control Board, Office of Chief Counsel, P.O. Box 100, Sacramento, CA 95812-0100.)

DISOBEDIENCE OF THIS SUBPOENA MAY CAUSE YOU TO BE LIABLE FOR CONTEMPT AND OTHER PENALTIES PROVIDED BY LAW

(Wat. Code, §§ 1090-1097; Gov. Code, §§ 11450.20(b), 11455.10-11455.20.)

Dated: 10/29/2015

Andrew Tauriainen
(signature)

Name: Andrew Tauriainen

Title: Attorney for Prosecution Team

Unless issued by an attorney pursuant to Code of Civil Procedure, Section 1985, subdivision (c), the original subpoena is embossed with this seal.

(See reverse for Endorsement on Subpoena, if used, and Proof of Service)

ATTACHMENT 12

PROOF OF SERVICE OF SUBPOENA

(Gov. Code, § 11440.20; Code Civ. Proc., §§ 1987, 1987.5, 1988, 1989, 2015.3, 2015.5.)

1. I served this ☐ subpoena ☑ subpoena duces tecum and supporting affidavit by:

☐ **personally delivering a copy to the person served as follows:**

a. Person served (*name*):	b. Date of delivery:
c. Address where served:	d. Time of delivery:
e. Witness fees and mileage both ways *(check one)*: (1) ☐ were paid. Amount: $_____ (2) ☐ were not paid. (3) ☐ were tendered to the witness's public entity employer as required by Government Code § 68097.2. The amount tendered was $_____	f. Fees for service. Amount: $_____

☐ **delivering true copies thereof by certified mail, return receipt requested, to the address as shown below.**
☐ **delivering true copies thereof enclosed in a sealed envelope to a messenger for immediate personal delivery to the address as shown below.**

Address where served: Served via electronic mail to the attached Service List in accordance with the Hearing Notice procedures

2. I certify that I received this ☐ subpoena ☑ subpoena duces tecum for service on _____.
Date

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on:

Date	*at (place)*	*Signature*
10/29/2015	Sacramento, California	

(For California sheriff, marshal, or constable use only)
I certify that the foregoing is true and correct and that this certificate is executed on:

Date	*at (place)*	*Signature*
	, California	

NOTE: IF THIS SUBPOENA IS ISSUED IN CONNECTION WITH A HEARING IN AN ADJUDICATIVE PROCEEDING UNDER GOVERNMENT CODE § 11400 ET SEQ., THE ATTORNEY OR PARTY WITHOUT AN ATTORNEY REQUESTING THIS SUBPOENA MUST PROVIDE A COPY OF THE SUBPOENA TO EVERY PARTY IN THE HEARING, AND FILE A COPY WITH THE STATE WATER RESOURCES CONTROL BOARD. THE COPY PROVIDED TO THE STATE WATER RESOURCES CONTROL BOARD MUST BE ACCOMPANIED BY A CERTIFICATE OF SERVICE LISTING THE NAMES AND ADDRESSES OF PARTIES WHO WERE PROVIDED COPIES IN ACCORDANCE WITH GOVERNMENT CODE § 11440.20. (Gov. Code, § 11440.20; Cal. Code Regs., tit. 23, § 648.4(c).) (Send to: The State Water Resources Control Board, Office of Chief Counsel, P.O. Box 100, Sacramento, CA 95812-0100.)

ENDORSEMENT ON SUBPOENA IN A PROCEEDING OTHER THAN AN ADJUDICATIVE PROCEEDING

Pursuant to Water Code §1086 and upon affidavit of _____ (copy attached) showing that the testimony of the witness ordered by the subpoena to appear is material and necessary to this proceeding, it is required that said witness attend this proceeding.

Dated: _____

_____
(signature)

Name: _____

Title: _____
State Water Resources Control Board

NOTE: This ENDORSEMENT is required if the subpoena is in connection with a proceeding other than a hearing under Government Code § 11400 and the witness is being compelled to testify at a location that is both out of the witness's county of residence and 150 miles or more from the witness's place of residence. (Wat. Code, § 1086; Cal. Code Regs., tit. 23, § 649.6(c).)

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

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	**Byron Bethany Irrigation District** Daniel Kelly Somach Simmons & Dunn 500 Capitol Mall, Suite 1000, Sacramento, CA 95814 dkelly@somachlaw.com
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	**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 Robert E. Donlan Ellison, Schneider & Harris LLP 2600 Capitol Ave, Suite 400 Sacramento, CA 95816 (916) 447-2166 red@eslawfirm.com
Central Delta Water Agency Jennifer Spaletta Spaletta Law PC PO Box 2660 Lodi, CA 95241 jennifer@spalettalaw.com Dante Nomellini and Dante Nomellini, Jr. Nomellini, Grilli & McDaniel ngmplcs@pacbell.net dantejr@pacbell.net	**California Department of Water Resources** Robin McGinnis, Attorney PO Box 942836 Sacramento, CA 94236-0001 robin.mcginnis@water.ca.gov
Richard Morat 2821 Berkshire Way Sacramento, CA 95864 rjmorat@gmail.com	**San Joaquin Tributaries Authority** Valeri Kincaid O'Laughlin & Paris LLP 2617 K Street, Suite 100 Sacramento, CA 95814 vkincaid@olaughlinparis.com
South Delta Water Agency John Herrick, Esq. 4255 Pacific Ave., Suite 2 Stockton, CA 95207 jherrlaw@aol.com	**State Water Contractors** Stefani Morris, Attorney 1121 L Street, Suite 1050 Sacramento, CA 95814 smorris@swc.org

ANDREW TAURIAINEN, SBN 214837
OFFICE OF ENFORCEMENT
STATE WATER RESOURCES CONTROL BOARD
1001 I Street, 16th Floor
Sacramento, California 95812-0100
Telephone: (916) 341-5445
Facsimile: (916) 341-5896
E-mail: andrew.tauriainen@waterboards.ca.gov

Attorney for the Division of Water Rights Prosecution Team

BEFORE THE STATE WATER RESOURCES CONTROL BOARD

STATE OF CALIFORNIA

In the Matter of: ADMINISTRATIVE CIVIL LIABILITY COMPLAINT AGAINST BYRON-BETHANY IRRIGATION DISTRICT	ADDENDUM TO SUBPOENA *DUCES TECUM* California Water Code § 1080; California Government Code § 11450.10; Cal. Code Regs., tit. 23, § 649.6(a)

TO: **BYRON-BETHANY IRRIGATION DISTRICT**
Daniel Kelly
500 Capitol Mall, Suite 1000
Sacramento, CA 95814
dkelly@somachlaw.com

NOTICE:

( ) You are served as an individual.

( ) You are served as (or on behalf of) the person doing business under the fictitious name of _____.

(**X**) You are served on behalf of: Byron-Bethany Irrigation District

Pursuant to California Water Code section 1080, California Government Code section 11450.10 , and California Code of Regulations, title 23, section 649.6, subdivision (a).

I. SUBPOENA FOR RECORDS AND DOCUMENTS

BYRON-BETHANY IRRIGATION DISTRICT (BBID) IS COMMANDED to produce the papers, books, records, and documents that are in BBID's possession or under BBID's control, as described below and in connection with the above-titled proceeding, by **noon, November 13, 2015**. Please send the documents to: Andrew Tauriainen, Staff Counsel III, Office of Enforcement, State Water Resources Control Board, 1001 I Street, 16th Floor, Sacramento, California 95814. You may email electronic records to Andrew.Tauriainen@waterboards.ca.gov, or deliver all records via mail or courier on a suitable electronic storage device, or make electronic records available to download via the Internet.

BBID may seek the advice of an attorney in any matter connected with this subpoena, and should consult its attorney promptly so that any problems concerning the production of documents may be resolved within the time required by this Subpoena. Failure to comply with the commands of this Subpoena will subject BBID to the proceedings and penalties provided by law.

A. DEFINITIONS

The capitalized terms listed below, as used in this Addendum to Subpoena *duces tecum*, are defined as follows:

1. The terms "BYRON-BETHANY IRRIGATION DISTRICT" "BYRON-BETHANY" and "BBID" mean Byron-Bethany Irrigation District, an Irrigation District formed pursuant to Division 11 of the California Water Code, and anyone working on its behalf, including but not limited to, its officers, employees, agents, contractors, consultants, and representatives.

2. The terms "YOU" or "YOUR" mean BYRON-BETHANY IRRIGATION DISTRICT.

3. The terms "COMMUNICATION" or "COMMUNICATIONS" mean any occurrence whereby data, expressions, facts, opinions, thoughts, or other information of any kind is transmitted in any form including, but not limited to, any conversation, correspondence, discussion, electronic mail, meeting, memorandum, message, note, or posting or other display on the Internet or the World Wide Web.

4. The terms "RELATING TO" or "RELATE TO" shall be construed in the broadest possible

sense and shall mean, without limitation, pertaining to, regarding, concerning, comprising, constituting, in connection with, reflecting, respecting, referring to, stating, describing, recording, noting, embodying, containing, mentioning, studying, analyzing, discussing or evaluating.

5. The term "DOCUMENT" or "DOCUMENTS" encompasses all documents, things, property and/or electronic materials within the scope of section 2031.010 of the California Code of Civil Procedure, and includes all WRITINGS as defined in section 250 of the California Evidence Code, and shall include, but not be limited to, any kind of written, graphic or recorded matter, however produced or reproduced, of any kind or description, whether sent or received or neither, including originals, copies and drafts and both sides thereof, and including but not limited to paper, books, letters, photographs, posters, objects, tangible things, correspondence, telegrams, cables, facsimiles, telex messages, confirmations, account statements, receipts, billing statements, memoranda, notes, notations, work papers, transcripts, minutes, reports, and recordings of telephone or other conversations, or other conversations, or in conferences or other meetings, affidavits, statements, opinions, reports, studies, analysis, evaluations, financial statements, prospectuses, circulars, certificates, press releases, annual reports, quarterly reports, magazine or newspaper articles, manuals, contracts, agreements, statistical records, journals, desk calendars, appointment books, diaries, lists, tabulations, summaries, sound recordings, computer printouts, data processing input and output, electronic mail, all records of communications recorded or encoded onto magnetic or computer disks, diskettes, audio and video tapes or any other media, all records kept by electronic, photographic, or mechanical means, and things similar to any of the foregoing, however denominated, dated, produced, generated or received.

6. The term "STATE BOARD" means the State Water Resources Control Board.

7. The terms "DIVERT" or "DIVERSION" shall mean any water taken by BBID from the Intake Channel to the Banks Pumping Plant (formerly Italian Slough) in Contra Costa County, or from any other source, under any claim of right and through any means.

8. The terms "AND" and "OR" have both conjunctive and disjunctive meanings.

9. All references to a "YEAR" refer to a calendar year.

10. Definitions for industry or trade terms contained herein are to be construed broadly. Where the industry or trade definition set forth herein does not coincide precisely with YOUR

definition, the question, inquiry or production request should be responded to or answered by using the definition that YOU apply and/or recognize in YOUR usage of the term, and YOUR should further document YOUR definition in the response. Non-industry or non-trade definitions should be applied as defined herein.

B. INSTRUCTIONS

1. Unless otherwise indicated, the time period covered by this subpoena is from **June 1, 2015** to **up to five days before YOUR full compliance with this subpoena**. Any documents RELATING TO this time period are to be produced, regardless of whether the documents came into existence before or during this period.

2. YOUR response to the subpoena should include a declaration or affidavit. It should state that a diligent search for all requested DOCUMENTS has been conducted and that the affiant or declarant was in charge of the search or otherwise monitored and reviewed the search sufficiently to be able to represent under oath that such a search was conducted. It should be signed under oath by the person most knowledgeable about the DOCUMENTS and YOUR efforts to comply with the subpoena. If different people are the most knowledgeable about portions of the search (e.g., one person is most knowledgeable about DOCUMENTS contained in computer media and a different person is most knowledge about DOCUMENTS contained on paper) each should sign an affidavit or declaration identifying the category in the request for DOCUMENTS for which that person is the most knowledgeable.

3. Unless otherwise indicated, for any DOCUMENT stored in a computer, including all electronic mail messages, YOU should produce the DOCUMENT in the original electronic file format in which it was created (e.g., Microsoft email should be provided in its original format, which would have the .pst suffix, not in a tif file; spreadsheets should be in their original file form, such as an Excel file and word-processed DOCUMENTS should be in their original file format, such as a Word or WordPerfect file), together with instructions and all other materials necessary to use or interpret the data. Electronic mail messages should be provided, even if only available on backup or archive tapes or disks. Computer media should be accompanied by (a) an identification of the generally available software needed to open and view the DOCUMENTS or (b) a copy of the software needed to open and view the DOCUMENT. Note, however, that if a

print-out from a computer DOCUMENT is a non-identical copy of the electronic form in which it was created (non-identical by way of example but not limitation, because it has a signature, handwritten notation, or other mark or attachment not included in the computer DOCUMENT), both the electronic form in which the DOCUMENT was created and the original print-out should be produced.

4. For each DOCUMENT contained in an audio or video medium, YOU should provide the tape, disk, or other device from which the audio or video can be played and the transcript of the DOCUMENT.

5. For all DOCUMENTS for which YOU do not produce in the original, as defined in Evidence Code section 255, YOU may submit copies (black and white copies if the original was in black and white, color copies if the original was in color, and, if the original was in electronic format, in the same electronic medium as the original) in lieu of original DOCUMENTS provided that such copies are accompanied by an affidavit of an officer of BBID stating that the copies of all types of DOCUMENTS are true, correct, and complete copies of the original DOCUMENTS. If there is in YOUR possession, custody or control no original, but only a copy or photographic record thereof, then YOU should produce a true and legible copy of each such DOCUMENT. The accompanying affidavit should state that the DOCUMENT is only a copy or photographic record and not the original.

6. If a DOCUMENT is responsive to this subpoena and is in YOUR control, but is not in YOUR possession or custody, in addition to obtaining and producing the DOCUMENT, identify the person who had possession or custody of the DOCUMENT, their telephone number and current business and residence addresses.

7. If any DOCUMENT subpoenaed is no longer in YOUR possession, custody, control, or care, YOU should provide a written statement identifying the DOCUMENT with specificity, stating whether it is lost or missing, has been destroyed, has been transferred to others, or has otherwise been disposed of. The written statement should also identify the person who disposed of the DOCUMENT, explain the circumstances and authorization for the disposition and the approximate date of the disposition of the DOCUMENT. If there are no DOCUMENTS responsive to a

document request, as to each such document request, YOU should include a statement to that effect in the accompanying declaration or affidavit.

8. DOCUMENTS provided in response to this subpoena should be complete and, unless privileged, unredacted, submitted as found in YOUR files (*e.g.,* DOCUMENTS that in their original condition were stapled, clipped, attached as a "post-it," or otherwise fastened together shall be produced in the same form).

9. Each DOCUMENT produced pursuant to this subpoena should be identified according to the category in the subpoena to which it is responsive. In lieu of indicating on each DOCUMENT the category to which it is responsive, on the date set for production, YOU may instead provide an index if YOU provide it in both paper and in electronic form (such as a computerized spreadsheet in Excel or a Word or WordPerfect document set up in a table format) of all DOCUMENTS YOU produce, as long as this index shows by document control number the request(s) to which each DOCUMENT or group of DOCUMENTS is responsive. Responsive DOCUMENTS from each person's files should be produced together, in one box or in consecutive boxes, or on one disk or consecutive disks. Mark each page of a paper DOCUMENT and each tangible thing containing audio, video, computer, or other electronic DOCUMENTS (e.g. cassette, disk, tape or CD) with corporate identification and consecutive document control numbers (e.g., S.I.. 00001, S.I. CD 001, S.I. audio tape 001). Number each box of DOCUMENTS produced and mark each with the name(s) of the person(s) whose files are contained therein, the requests(s) to which they are responsive, and the document control numbers contained therein.

10. For data produced in spreadsheets or tables, include in the declaration or affidavit the identification of the fields and codes and a description of the information contained in each coded field.

11. The document requests contained in this subpoena shall be deemed to include a request for all relevant DOCUMENTS in the personal files, including but not limited to files contained on laptops, handheld devices, home computers and home files of all YOUR officers, employees, accountants, agents and representatives, including sales agents who are independent contractors, and unless privileged, attorneys.

12. If any DOCUMENTS are withheld from production based on a claim of privilege, provide a log under oath by the affiant or declarant, which includes each DOCUMENT'S authors, addressees, date, a description of each DOCUMENT, all recipients of the original, and any copies, and the request(s) of this subpoena to which the DOCUMENT is responsive. Attachments to a DOCUMENT shall be identified as such and entered separately on the log. For each author, addressee, and recipient, state the person's full name, title, and employer or firm, and denote all attorneys with an asterisk. To the extent the claim of privilege relates to any employee, agent, representative, or outside attorney, identify the person's name, division, and organization. Include the number of pages of each DOCUMENT and in the description of the DOCUMENT, provide sufficient information to identify its general subject matter without revealing information over which a privilege is claimed. For each DOCUMENT withheld under a claim that it constitutes or contains attorney work product, also state whether YOU assert that the DOCUMENT was prepared in anticipation of litigation or for trial and, if so, identify the anticipated litigation or trial on which the assertion is based. Submit all non-privileged portions of any responsive DOCUMENT (including non-privileged or redactable attachments) for which a claim of privilege is asserted (except where the only non-privileged information has already been produced in response to this instruction), noting where redactions in the DOCUMENT have been made. DOCUMENTS authored by outside lawyers representing YOU that were not directly or indirectly furnished to YOU or any third-party, such as internal law firm memoranda, may be omitted from the log.

13. Whenever necessary to bring within the scope of this subpoena DOCUMENTS that might otherwise be construed as outside its scope, the use of the verb in any tense shall be construed as the use of that verb in all other tenses, and the singular shall include the plural, and vice versa, so as to make this subpoena broadly inclusive.

C. <u>DOCUMENTS TO BE PRODUCED</u>

This subpoena commands production of the original of each and every DOCUMENT now or at any time in the possession, custody or control of YOU without regard to the person(s) by whom or for whom said DOCUMENTS were prepared, including, but not limited to, all DOCUMENTS in the personal, business, or other files of all present or former officers, directors,

trustees, agents, employees, attorneys, and accountants of BBID, which RELATES TO any of the following subjects:

1. All DOCUMENTS and COMMUNICATIONS RELATING TO the DIVERSION of water by BYRON-BETHANY IRRIGATION DISTRICT during the period June 1 through September 30, 2015, including, but not limited to, daily and monthly DIVERSION amounts.

2. ALL DOCUMENTS and COMMUNICATIONS RELATING TO the DIVERSION of water by BBID pursuant to BBID's claimed pre-1914 appropriative water right (Statement Number S021256) during the period June 1 through September 30, 2015, including, but not limited to, the daily and monthly DIVERSION amounts.

3. ALL DOCUMENTS and COMMUNICATIONS RELATING TO any contract or agreement between BBID and the California Department of Water Resources ("DWR") regarding the DIVERSION of water at BBID's point or points of DIVERSION in effect during the period June 1, 2015, through September 30, 2015.

4. ALL DOCUMENTS and COMMUNICATIONS RELATING TO the reporting by BBID to DWR or to any agents, employees, attorneys, and accountants of DWR, RELATING TO the DIVERSION of water during the period June 1, 2015, through September 30, 2015, including, but not limited to, daily DIVERSION amounts.

5. ALL DOCUMENTS and COMMUNICATIONS RELATING TO water supply agreements or contracts to supply water to BBID or to property within BBID's boundaries at any time during the period June 1, 2015, through September 30, 2015, made between BBID and any other party or parties, including, but not limited to, Carmichael Water District, Contra Costa Water District, and South San Joaquin Irrigation District.

6. ALL DOCUMENTS and COMMUNICATIONS RELATING TO the DIVERSION of water by BBID pursuant to any water supply agreements or contracts to supply water to BBID or to property within BBID's boundaries at any time during the period June 1, 2015, through September 30, 2015, including daily, weekly, and monthly DIVERSION amounts.

7. ALL DOCUMENTS and COMMUNICATIONS RELATING TO water supply agreements or contracts for BBID to supply water to any other party or parties at any time during the period June 1 through September 30, 2015, made between BBID and any other party or

parties including, but not limited to, Contra Costa County Airport and Mountain House Community Services District.

8. ALL DOCUMENTS and COMMUNICATIONS RELATING TO the DIVERSION of water by BBID pursuant to any water supply agreements or contracts for BBID to supply water to any other party or parties at any time during the period June 1, 2015, through September 30, 2015, including daily, weekly, and monthly DIVERSION amounts.

9. ALL DOCUMENTS and COMMUNICATIONS RELATING TO the delivery of water by BBID to property within BBID's boundaries, for any purpose or use including, but not limited to, irrigation, industrial, municipal or domestic, during the period June 1, 2015, through September 30, 2015, including the total amount of water delivered during the period, the amount of water delivered each day during the period, the recipients of the water, the total amount of water delivered to each recipient during the period, and the amount of water delivered on a daily basis to each recipient during that period.

10. ALL DOCUMENTS and COMMUNICATIONS RELATING TO the delivery of water by BBID to property outside of BBID's boundaries, for any purpose including, but not limited to, irrigation, municipal or domestic, during the period June 1 through September 30, 2015, including the total amount of water delivered during the period, the total amount of water delivered each day during the period, the recipients of the water, the total amount of water delivered to each recipient during the period, and the amount of water delivered on a daily basis to each recipient during that period.

11. ALL DOCUMENTS and COMMUNICATIONS RELATING TO any agreements between BBID and any other party, including, but not limited to the United States Bureau of Reclamation ("Reclamation") or DWR, to wheel water through water facilities owned or controlled by any other party including, but not limited to, Reclamation or DWR, at any time during the period June 1, 2015, through September 30, 2015.

Date: 10/29/2015

Andrew Tauriainen
Attorney for the Prosecution Team
Office of Enforcement
State Water Resources Control Board

ANDREW TAURIAINEN, SBN 214837
OFFICE OF ENFORCEMENT
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Attorney for the Division of Water Rights Prosecution Team

BEFORE THE STATE WATER RESOURCES CONTROL BOARD

STATE OF CALIFORNIA

In the Matter of: ADMINISTRATIVE CIVIL LIABILITY COMPLAINT AGAINST BYRON-BETHANY IRRIGATION DISTRICT	AFFIDAVIT IN SUPPORT OF SUBPOENA *DUCES TECUM* California Water Code § 1080; California Government Code § 11450.10; Cal. Code Regs., tit. 23, § 649.6(a)

I, Andrew Tauriainen, declare as follows:

1. I am an attorney for the State Water Resources Control Board (State Water Board), Office of Enforcement. I am counsel for the Division of Water Rights Prosecution Team in the above-entitled matter. I have personal knowledge of all facts stated in this declaration and, if called as a witness, could and would testify competently under oath.

2. The Assistant Deputy Director, Division of Water Rights, issued an Administrative Civil Liability Complaint (ACLC) against the Byron-Bethany Irrigation District (BBID) on July 20, 2015, alleging that BBID violated Water Code section 1052 which prohibits the unauthorized diversion or use of water, and diverted water from June 13 through June 25, 2015, a period in which State Water Board staff had determined that no water was available to serve BBID's claimed pre-1914 appropriative water right..

3. On August 19, 2015, the Division of Water Rights Hearing Team issued a Notice of Public Hearing and Pre-Hearing Conference, scheduling the hearing on the ACLC matter for October 28, 2015, and continuing the hearing if necessary on October 29 and 30, 2015. The

Hearing Officer held a Pre-Hearing Conference on September 25, 2015, during which she indicated that she would consider various requests by a number of parties to reschedule the hearing and evidentiary submittal deadlines. On October 2, 2015, the Hearing Officer issued a letter postponing the hearing until March 21, 2016, and postponing the evidence and witness submittal deadlines to January 18, 2016, with rebuttal evidence and witness submittals due February 22, 2016.

4. Good cause exists for the production of the documents described in the Subpoena *Duces Tecum* and Addendum, served herewith, because the documents requested concern the issues outlined in the ACLC and are required in order to determine whether BBID violated Water Code section 1052 by illegally diverting water. The requested documents specifically concern BBID's diversions of water from the Intake Channel to the Banks Pumping Plant (formerly Italian Slough), and its diversions of water pursuant to water supply contracts, including those claimed by BBID in submittals to the Division of Water Rights pursuant to Order WR 2015-0002-DWR (Order for Additional Information dated February 4, 2015).

5. The documents and information requested in the Subpoena *Duces Tecum* and Addendum, served herewith, are within BBID's possession and/or within BBID's control, as they concern BBID's diversions and deliveries of water, including the basis of right for the diversions and the amounts diverted.

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

Date: 10/29/2015

Andrew Tauriainen
Office of Enforcement
State Water Resources Control Board

SOMACH SIMMONS & DUNN
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ATTORNEYS AT LAW

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October 30, 2015

Via Electronic Mail

Andrew Tauriainen, Attorney III
State Water Resources Control Board
Office of Enforcement
1001 I Street, 16th Floor
Sacramento, CA 95814

Re: Byron-Bethany Irrigation District's Meet and Confer Re Subpoena Duces Tecum - Enforcement Action ENF01951

Dear Mr. Tauriainen:

The purpose of this letter is to meet and confer with you regarding a Subpoena *Duces Tecum* (Subpoena) issued by the Prosecution Team on October 29, 2015. The Byron-Bethany Irrigation District (BBID) is preparing a Motion for Protective Order (Motion) requesting the State Water Resources Control Board (SWRCB) issue an order preventing the Prosecution Team from imposing unreasonable and oppressive demands through the Subpoena.

As a preliminary matter, the Prosecution Team failed to consult with BBID regarding BBD's availability on November 13, 2015. Moreover, for the following reasons the Subpoena is oppressive and unreasonable. In the Administrative Civil Liability complaint in Enforcement Action ENF01951, the SWRCB alleges an unlawful diversion of water from June 13 through June 25, 2015. The Subpoena, however, seeks a multitude of categories of documents related to the diversion and use of water through the end of September 2015. Thus, your Subpoena seeks documents not relevant to Enforcement Action ENF01951, and seeks documents not calculated to lead to the discovery of admissible evidence.

Furthermore, BBID requested documents from the Prosecution Team and SWRCB through a Public Records Act request on July 21, 2015. After more than three months, neither the Prosecution Team nor the SWRCB has fulfilled its legal obligation to produce the requested documents. Given the failure of the Prosecution Team and the SWRCB to timely produce documents sought by BBID, your demand that all the information sought by your Subpoena be produced in less than 10 business days is an abuse of the discovery process.

BBID is prepared to cooperate with the Prosecution Team to narrow the scope of documents sought by the Subpoena, and to increase the time for production, in order to allow the Prosecution Team to obtain relevant information within a reasonable time. In the event, however, you are unwilling to modify the scope of your Subpoena and the time for production of responsive documents, BBID will file the Motion.

If we do not receive a written response to this letter by 5:00 p.m. on November 2, 2015, we will assume that you decline to modify the Subpoena as requested, and we will file the Motion.

Sincerely,

For,

Daniel Kelly
General Counsel
Byron-Bethany Irrigation District

DK:yd

cc: Service List

SERVICE LIST OF PARTICIPANTS
BYRON-BETHANY IRRIGATION DISTRICT
ADMINISTRATIVE CIVIL LIABILITY HEARING

(Revised 9/2/15; Revised: 9/11/15)

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	Byron-Bethany Irrigation District Daniel Kelly Somach Simmons & Dunn 500 Capitol Mall, Suite 1000 Sacramento, CA 95814 dkelly@somachlaw.com
Patterson Irrigation District Banta-Carbona Irrigation District The West Side Irrigation District Jeanne M. Zolezzi Herum\Crabtree\Suntag 5757 Pacific Avenue, Suite 222 Stockton, CA 95207 jzolezzi@herumcrabtree.com	City and County of San Francisco Jonathan Knapp Office of the City Attorney 1390 Market Street, Suite 418 San Francisco, CA 94102 jonathan.knapp@sfgov.org
Central Delta Water Agency Jennifer Spaletta Law PC P.O. Box 2660 Lodi, CA 95241 jennifer@spalettalaw.com Dante John Nomellini Daniel A. McDaniel Dante John Nomellini, Jr. NOMELLINI, GRILLI & MCDANIEL 235 East Weber Avenue Stockton, CA 95202 ngmplcs@pacbell.net dantejr@pacbell.net	California Department of Water Resources Robin McGinnis, Attorney P.O. Boc 942836 Sacramento, CA 94236-0001 robin.mcginnis@water.ca.gov
Richard Morat 2821 Berkshire Way Sacramento, CA 95864 rmorat@gmail.com	San Joaquin Tributaries Authority Tim O'Laughlin Valerie C. Kincaid O'Laughlin & Paris LLP 2617 K Street, Suite 100 Sacramento, CA 95816 towater@olaughlinparis.com vkincaid@olaughlinparis.com

South Delta Water Agency John Herrick Law Offices of John Herrick 4255 Pacific Avenue, Suite 2 Stockton, CA 95207 Email: Jherrlaw@aol.com	State Water Contractors Stefani Morris 1121 L Street, Suite 1050 Sacramento, CA 95814 smorris@swc.org

Tauriainen, Andrew@Waterboards

From: Tauriainen, Andrew@Waterboards
Sent: Monday, November 09, 2015 12:42 PM
To: 'Michael Vergara'
Cc: Dan kelly; Herrick, John @aol.com; 'Jennifer Spaletta' (jennifer@spalettalaw.com); Jeanne Zolezzi; Valerie Kincaid; Jonathan Knapp (jonathan.knapp@sfgov.org); rjmorat@gmail.com; McGinnis, Robin C.@DWR; Stefanie Morris (smorris@swc.org); ''Dante Nomellini, Jr.'' (dantejr@pacbell.net); ngmplcs@pacbell.net; Janelle Krattiger; kharrigfeld@herumcrabtree.com; Dean Ruiz (dean@hprlaw.net)
Subject: RE: BBID Meet & Confer (Enforcement Action ENF01951)

Your insistence that BBID's activities on days outside of the alleged violations period are irrelevant to the alleged violations is baffling, but consistent with your demonstrated unwillingness to address any fact issues except through contentious discovery. Please address any motion to the subpoena as issued.

Andrew Tauriainen, Attorney III
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atauriainen@waterboards.ca.gov

From: Michael Vergara [mailto:mvergara@somachlaw.com]
Sent: Monday, November 09, 2015 10:35 AM
To: Tauriainen, Andrew@Waterboards
Cc: Dan kelly; Herrick, John @aol.com; 'Jennifer Spaletta' (jennifer@spalettalaw.com); Jeanne Zolezzi; Valerie Kincaid; Jonathan Knapp (jonathan.knapp@sfgov.org); rjmorat@gmail.com; McGinnis, Robin C.@DWR; Stefanie Morris (smorris@swc.org); ''Dante Nomellini, Jr.'' (dantejr@pacbell.net); ngmplcs@pacbell.net; Janelle Krattiger; kharrigfeld@herumcrabtree.com; Dean Ruiz (dean@hprlaw.net)
Subject: Re: BBID Meet & Confer (Enforcement Action ENF01951)

Andrew,

While I appreciate your willingness to reduce the scope of the demands, the State Water Resources Control Board is "prosecuting" BBID for alleged violation of Water Code section 1052 during days specified in the ACL complaint. The ACL complaint serves to limit the scope of the Prosecution Team's discovery, and the Prosecution Team cannot now seek to use the ACL compliant as a means of expanding the allegations against BBID.

I do appreciate your willingness to provide BBID more time to respond to the subpoena, but because we disagree regarding the the time period covered by the demands we will file a motion to quash. If, however, you reconsider and agree to limit the scope of the subpoena to the period June 13, 2015 to June 25, 2015, as alleged in the ACL complaint, we will provide responsive documents (to the extent they exist) by November 30.

Please advise by 1:00 p.m. today.

Best Regards,

Mike

SOMACH SIMMONS & DUNN
ATTORNEYS AT LAW

Michael E. Vergara | *Attorney*

500 Capitol Mall, Suite 1000 | Sacramento, CA 95814
Office 916.446.7979 | **Direct** 916.469-3824 | **Fax** 916.446.8199 | mvergara@somachlaw.com
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On Nov 6, 2015, at 10:43 AM, Tauriainen, Andrew@Waterboards <Andrew.Tauriainen@waterboards.ca.gov> wrote:

Michael,

My apologies for not responding before now. I was tied up yesterday. If it is not too late, the Prosecution Team offers the following: Discovery relating to diversion before the alleged violations period is relevant to determining if the diversions during the alleged violations period were consistent with diversions prior. Discovery relating to diversion after the alleged violations period is relevant to determining whether BBID ceased diversions on June 25. The Prosecution Team therefore is willing to limit the scope of the subpoena to June 1 through June 30, 2015.

November 30 is an acceptable production deadline.

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From: Michael Vergara [mailto:mvergara@somachlaw.com]
Sent: Wednesday, November 04, 2015 6:09 PM
To: Tauriainen, Andrew@Waterboards
Cc: Dan kelly; Herrick, John @aol.com; 'Jennifer Spaletta' (jennifer@spalettalaw.com); Jeanne Zolezzi; Valerie Kincaid; Jonathan Knapp (jonathan.knapp@sfgov.org); rjmorat@gmail.com; McGinnis, Robin C.@DWR; Stefanie Morris (smorris@swc.org); "Dante Nomellini, Jr." (dantejr@pacbell.net); ngmplcs@pacbell.net; Janelle Krattiger; kharrigfeld@herumcrabtree.com; Dean Ruiz (dean@hprlaw.net)
Subject: Re: BBID Meet & Confer (Enforcement Action ENF01951)

Andrew,

The Administrative Civil Liability Compliant issued by the SWRCB against BBID states in paragraphs 33 and 34 that the SWRCB seeks civil penalties from BBID for "unauthorized diversions … for a total of thirteen (13) days" between June 13, 2015 and June 25, 2015. Thus, we maintain that the scope of your discovery is limited to the period June 13, 2015 to June 25, 2015. We will not voluntarily allow you to engage in a fishing expedition that deviates from the confines of the Complaint. if you agree to limit the scope of the subpoena to the time period covered by the Complaint, we are prepared to identify and produce relevant responsive documents for the the period of June 13, 2015 to June 25, 2015.

Also, as I stated in my previous letter to you regarding this matter, we object to the stated time for production (i.e., November 13). We believe a realistic production date is November 30, 2015.

If these limitations and changes are acceptable to you, please let me know before 5:00 p.m., Thursday, November, 5. If we can't reach agreement by tomorrow, we will seek a protective order.

I await your response.

Best Regards,

Mike

<image001.gif>

Michael E. Vergara | *Attorney*

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On Oct 30, 2015, at 4:36 PM, Tauriainen, Andrew@Waterboards <Andrew.Tauriainen@waterboards.ca.gov> wrote:

Daniel and Michael:

1. What specific changes to the subpoena do you propose to narrow the scope of the documents sought? The subpoena generally seeks diversion information because you've indicated that you will object to CDEC evidence and discovery is your preferred method to reach fact stipulations. The subpoena seeks diversion information from June 1 through June 12 as relevant to determining your baseline and average diversions for the month of June. The subpoena seeks diversion information after June 25 in order to determine when BBID stopped diverting, and to examine why BBID resumed diversions in July, both of which the Board may find relevant under Water Code section 1055.3. The subpoena seeks documents relating to contracts, exchange agreements, etc, starting June 1 in order to determine whether BBID had an alternative supply or basis for diverting during the relevant period.

2. What specific changes to you propose to increase the time for production? What if we set a specific date, e.g., November 12, at the commencement of the first deposition, as the deadline to complete PRA and subpoena disclosures?

Andrew Tauriainen, Attorney III
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atauriainen@waterboards.ca.gov

From: Yolanda De La Cruz [mailto:ydelacruz@somachlaw.com]
Sent: Friday, October 30, 2015 3:50 PM
To: Tauriainen, Andrew@Waterboards
Cc: Herrick, John @aol.com; Jennifer L. Spaletta; Valerie Kincaid; Jeanne Zolezzi; Tim O'Laughlin; Tauriainen, Andrew@Waterboards; Jonathan Knapp; Richard Morat; McGinnis, Robin C.@DWR; Stefanie Morris; Marian Norris; Rick Gilmore; Unit, Wr_Hearing@Waterboards; Dan Kelly; Michael Vergara
Subject: BBID Meet & Confer (Enforcement Action ENF01951)

Attached please find Byron-Bethany's Irrigation District's Meet and Confer Re Subpoena Duces Tecum.

<image001.gif>

Yolanda De La Cruz | *Legal Secretary*

to Daniel Kelly, Kanwarjit S. Dua, and Aaron A. Ferguson

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