

1 Jennifer L. Spaletta – SBN: 200032  
SPALETTA LAW PC  
2 Post Office Box 2660  
Lodi, California 95241  
3 Telephone: (209) 224-5568  
Facsimile: (209) 224-5589  
4 Email: jennifer@spalettalaw.com

5 Dante John Nomellini (SBN 040992)  
Daniel A. McDaniel (SBN 77363)  
6 Dante John Nomellini, Jr. (SBN 186072)  
NOMELLINI, GRILLI & McDANIEL  
7 PROFESSIONAL LAW CORPORATIONS  
Post Office Box 1461  
8 Stockton, California 95201  
Telephone: (209) 465-5883  
9 Facsimile: (209) 465-3956

10 Attorneys for  
Central Delta Water Agency

11 Additional counsel on following page

12 **BEFORE THE STATE WATER RESOURCES CONTROL BOARD**

13  
14 ENFORCEMENT ACTION ENF01949  
DRAFT CEASE AND DESIST ORDER  
15 REGARDING UNAUTHORIZED  
DIVERSIONS OR THREATENED  
16 UNAUTHORIZED DIVERSIONS OF  
WATER FROM OLD RIVER IN SAN  
17 JOAQUIN COUNTY

**CDWA, SDWA, WSID Opposition to DWR  
Motion for Protective Order re Deposition  
of Paul Marshall; Supporting Declaration  
of Jennifer L. Spaletta**

18 ENFORCEMENT ACTION ENF01951  
DRAFT ADMINISTRATIVE LIABILITY  
19 COMPLAINT REGARDING  
UNAUTHORIZED DIVERSIONS BY  
20 BYRON-BETHANY IRRIGATION  
DISTRICT

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Additional counsel:

JOHN HERRICK (SBN 139125)  
LAW OFFICES OF JOHN HERRICK  
4255 Pacific Avenue, Suite 2  
Stockton, CA 95207  
Telephone: (209) 956-0150  
Facsimile: (209) 956-0154

S. DEAN RUIZ (SBN 213515)  
HARRIS, PERISHO & RUIZ  
3439 Brookside Road, Suite 210  
Stockton, CA 95219  
Telephone: (209) 957-4254  
Facsimile: (209) 957-5338

Attorneys for SOUTH DELTA WATER  
AGENCY

JEANNE M. ZOLEZZI – SBN: 121282  
KARNA E. HARRIGFELD – SBN: 162824  
HERUM\CRABTREE\SUNTAG  
*A California Professional Corporation*  
5757 Pacific Avenue, Suite 222  
Stockton, CA 95207  
Telephone: (209) 472-7700

Attorneys for  
THE WEST SIDE IRRIGATION DISTRICT  
BANTA-CARBONA IRRIGATION  
DISTRICT  
PATTERSON IRRIGATION DISTRICT

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## I. Introduction

Central Delta Water Agency (“CDWA”), South Delta Water Agency and The West Side Irrigation District (Delta parties) oppose DWR’s request for a protective order for the Deposition of Paul Marshall because:

- If Marshall is allowed to testify as an expert, the Delta parties must be allowed to depose him to avoid unfair surprise and prejudice.
- Depositions of party witnesses are expressly allowed by the Water Code.
- CDWA’s prior notice of deposition for Mr. Marshall was not delayed, but was rescheduled at the request of DWR, and then postponed pending DWR’s decision as to whether or not Mr. Marshall would submit rebuttal testimony. CDWA expressly reserved the right to depose Mr. Marshall should he submit rebuttal testimony.
- CDWA has not requested documents that have already been produced and carefully limited the notice to matters that are directly relevant to these proceedings and the opinions expressed by Mr. Marshall in his testimony.

We respectfully request that the Hearing Officers decide both the motion in limine regarding Marshall and Hutton and the motions for protective order as soon as possible given the limited number of days before the hearing, or alternatively reschedule the hearing at least 30 days out.

## II. Statement of Facts

Paul Marshall was originally listed by DWR as a case-in-chief witness. WSID, BBID and the Delta Agencies first set Paul Marshall’s deposition for November 23<sup>rd</sup>, after meeting and conferring with DWR for available dates. (Spaletta Dec. ¶ 2.) Due to holiday schedules and changes in the hearing schedule, the Marshall deposition was continued to December 30<sup>th</sup>, again after meeting and conferring with DWR for available dates. (Spaletta Dec. ¶ 3).

On December 9, 2015, DWR’s counsel informed CDWA’s counsel that Mr.



1 Marshall was no longer available on December 30<sup>th</sup> for the deposition and the parties  
2 started meeting and conferring on next available dates in late January or early February.  
3 The parties ended up agreeing to reset the deposition for February 2, 2016. (Spaletta  
4 Dec. ¶ 4).

5 On January 19, 2016, DWR submitted a revised NOI, withdrawing its case-in-  
6 chief and removing Mr. Marshall as a listed witness. DWR's counsel then contacted  
7 CDWA's counsel on January 25, 2016 stating: "You mentioned that you and the other  
8 parties that noticed the deposition were thinking about cancelling it, because DWR is no  
9 longer submitting a case-in-chief. Do you have an update?" CDWA's counsel  
10 responded: "I do not see a need to depose Paul at this point...If Paul submits rebuttal  
11 testimony, we may seek a deposition then." BBID's counsel responded: "Same for  
12 BBID." (Spaletta Dec. ¶ 5.)

13 On February 9, 2016, as the deadline for submission of rebuttal testimony got  
14 closer, counsel for CDWA emailed counsel for DWR and SWC, stating: "WSID, BBID  
15 and the delta agencies will likely want to depose your rebuttal witnesses and would like  
16 to coordinate dates soon given the tight timelines. We are looking at March 1, 2, 3, or 4  
17 in Sacramento. Can you please confirm if your rebuttal witnesses could be available on  
18 those days so that we can collectively reserve them on our calendars?" (Spaletta Dec. ¶  
19 6.)

20 On February 10, 2016, DWR's counsel responded: "DWR, like Westlands, has  
21 not yet decided whether it will have a rebuttal witness." (Spaletta Dec., ¶ 7.)

22 On February 22, 2016 (twelve days later) DWR submitted Paul Marshall's 28  
23 page expert report as a rebuttal exhibit. (Spaletta Dec., ¶ 8.)

### 24 **III. Argument**

#### 25 **A. The Water Code Entitles CDWA to Depose Mr. Marshall if his Testimony is not** 26 **Stricken as Untimely.**

27 CDWA's and BBID's motions in limine explain why the Marshall rebuttal expert  
28 testimony should be stricken as untimely and prejudicial. (CCP §§ 2034.300, 2034.310.)



1 If it is not stricken, as a party to this proceeding, CDWA is entitled to depose Mr.  
2 Marshall (or any witness) in the manner set forth in Part 4 of the Code of Civil Procedure.  
3 (Water Code section 1100.)

4 A deposition is particularly appropriate in this situation due the untimeliness and  
5 the expert nature and breadth of the proffered Marshall testimony. (*Staub v. Kiley*, 226  
6 Cal. App. 4th 1437, 1440 (2014) [The operative inquiry is whether the conduct being  
7 evaluated will compromise these evident purposes of the discovery statutes: to assist the  
8 parties and the trier of fact in ascertaining the truth; to encourage settlement by  
9 educating the parties as to the strengths of their claims and defenses; to expedite and  
10 facilitate preparation and trial; to prevent delay; and to safeguard against surprise].)

11 **B. The Deposition is Necessary to Avoid Undue Prejudice Due to DWR's Violation**  
12 **of the Rules of Civil Procedure**

13 DWR argues the Hearing Officer did not contemplate depositions of rebuttal  
14 witnesses. The Hearing Officer also did not contemplate that DWR would violate the  
15 rules of Civil Procedure and produce a untimely and previously undisclosed expert  
16 opinion as Rebuttal Testimony after withdrawing the same witness from its case-in-chief.  
17 CCP section 2034.310 is clear - a late disclosed expert may only testify regarding "the  
18 falsity or non-existence of a fact used as the foundation for any opinion by any other  
19 party's expert witness, but may not include testimony that contradicts an opinion." If  
20 DWR had properly limited Mr. Marshall's rebuttal testimony per the code, we would not  
21 be having this discussion.

22 CDWA, SDWA, WSID and BBID will be unfairly prejudiced if the Marshall  
23 testimony is admitted and the Hearing Officers have prohibited depositions. Marshall's  
24 expert testimony relies on complex technical models that employ large data sets to reach  
25 conclusions and opinions that DWR asserts are useful to the Hearing Officers to decide  
26 these proceedings. In order for CDWA's attorneys to prepare questions for cross-  
27 examination, its experts will need the opportunity to review these data sets, model  
28 assumptions, and Mr. Marshall's further explanation as to how he reached his opinions.

1 Unlike DWR and the SWC, the smaller districts and agencies involved as parties  
2 do not have modelers and hydrologists on staff like Mr. Hutton or Mr. Marshall. Rather  
3 they must rely on obtaining outside consultants to understand the testimony provided.  
4 They also must be able to ask questions of the witness about the testimony in order to  
5 prepare to deal with the testimony at trial.

6 **C. DWR Cannot Meet Its Burden for a Protective Order**

7 The party seeking a protective order on “the basis that the information is from a  
8 source that is not reasonably accessible because of undue burden or expense *shall bear*  
9 *the burden* of demonstrating that the information is from a source that is not reasonably  
10 accessible because of undue burden or expense.” (C.C.P. § 2025.420(c).) Further, a  
11 court may order the production of electronically stored information, even if it is not  
12 reasonably accessible, unless the moving party shows one of four conditions exist: (1) it  
13 is possible to obtain the information from a more convenient, less burdensome, or less  
14 expensive source; (2) the discovery is unreasonably cumulative or duplicative; (3) the  
15 party had ample opportunity to obtain the information sought; or (4) the likely burden of  
16 the proposed discovery outweighs the likely benefit, taking into account the importance  
17 of the issues in the litigation, and the importance of the requested discovery in resolving  
18 the issues. (C.C.P. § 2025.420(e), (f).)

19 DWR cannot meet this burden.

20 **1. The Information Sought by CDWA is not Unreasonably Cumulative or**  
21 **Duplicative and is not Otherwise Available to CDWA**

22 The CDWA Notice specifically limits requested documents to those not previously  
23 produced during the course of the proceedings. (Notice of Deposition, pg. 3.) It is  
24 disingenuous for DWR to assert that the protective order should be granted, in part, due  
25 to the duplicative nature of the request. CDWA has no inclination to spend more time or  
26 effort with Mr. Marshall in a deposition than is necessary to prepare to deal with his  
27 untimely expert opinions at the hearing.  
28



1 Further, the fact that CDWA has received Mr. Marshall's testimony and exhibits is  
2 irrelevant. The testimony contains numerous factual conclusions, summaries and  
3 statements of opinion that are not supported by either (1) the information in the  
4 testimony itself, (2) the exhibits produced with the testimony, or (3) the previously  
5 produced documents from DWR. CDWA is entitled to conduct discovery to determine  
6 (1) if Marshall relied on other documents or data sets to support his opinions and  
7 conclusory statements, and (2) if so, what those documents or data sets include.  
8 Otherwise, this proceeding will be a sham.

9 For example, Marshall expresses the following new expert opinion regarding  
10 impacts on the Projects, which should have been presented as case-in-chief testimony:

11 "When unauthorized diversions occur, the amount of water available to  
12 transport salts out of the Delta or dilute it is reduced, causing  
13 incrementally worse salinity conditions. Project operators must therefore  
14 increase reservoir releases or decrease exports to improve salinity  
15 conditions. These adjustments come from existing Project supplies,  
16 reducing them by a corresponding amount." (page 11).

17 Marshall has not defined, nor provided as Exhibits, what he understands to be  
18 "unauthorized diversions." It is entirely unclear whether he is talking about diversions by  
19 BBID, WSID or others and how he came to conclude that any particular diversion was not  
20 authorized. Nor has Marshall identified when, if at all, the Project operators increased  
21 reservoir releases or decreased exports to improve salinity conditions during 2015 or any  
22 other year. While DWR does keep records of what is the "controlling factor" for daily  
23 operations, these records are not available on-line except for the current day. Thus, there  
24 is no way to determine if Marshall is correct or exaggerating in this opinion without review  
25 the records that he is relying on to reach the opinion. Finally, he opines that the  
26 adjustments "reduce" Project supplies. But there is no quantification of how much supply  
27 was allegedly reduced as a result of releases to meet the salinity standard, as opposed to  
28 releases required for other purposes in the testimony or in any of the provided exhibits.  
Surely, Mr. Marshall, to make such a statement, would have some documents or records



1 that would support such a statement so that the parties and the hearing officers could be  
2 assured that the statement is based on actual analysis as opposed to assumption.

3 Similarly, on pages 22-28 of his testimony, Mr. Marshall describes purported salinity  
4 intrusion impacts of zero net delta outflow index based on DSM2 simulations. These  
5 modeling simulations and the underlying inputs and model assumptions have not been  
6 provided, but are requested as part of the notice of deposition. If the opinions regarding  
7 these new DSM2 runs are going to be admitted, the other parties are entitled to understand  
8 how the simulations were done so they can properly prepare to cross-examine Mr.  
9 Marshall about the testimony about them.

10 In short, if DWR is going to be allowed to put forth an expert's opinion in these  
11 proceedings that the diversions from the Delta harmed the projects by requiring the  
12 projects to release more water for salinity - the Delta interests are absolutely entitled to  
13 understand the basis for that opinion, or learn enough to be able to explain to the Hearing  
14 Officers that the opinion lacks a foundational basis. If this discovery is prevented, the  
15 opinions must be stricken.

16 **2. There is no Undue Burden or Expense on DWR to Produce Mr. Marshall for**  
17 **deposition or to Produce the Requested Documents**

18 Every deposition and document request imposes some burden on a party. Not  
19 every burden is an "undue" burden. A party cannot expect to be able to produce an expert  
20 witness to provide opinion testimony and then protect that witness from deposition or  
21 production of the information that purportedly supports the opinions expressed. This  
22 would be severely unfair and is expressly prohibited by the Code of Civil Procedure. It is  
23 not an "undue" burden on DWR to require its expert witness to comply with the minimum  
24 requirements of the code in order to testify.

25 Here, CDWA's notice is carefully limited. Document requests 1-10 request only  
26 those previously unproduced documents that support specific statements, opinions or  
27 factual claims made in the Marshall testimony proffered in this case. Requests 11-13  
28 request only previously unproduced correspondence between Marshall or DWR  
representatives and the State Board regarding the water availability determinations that

1 are the express subject of Phase 1 of these hearings. These requests are limited to just  
2 what is necessary to understand the basis for Mr. Marshall's expert opinions, determine if  
3 his opinions are supported based on this underlying information, and whether or not Mr.  
4 Marshall has bias. No more, no less. If the requested categories of documents were  
5 already provided, as DWR asserts, then the burden is actually minimal and the deposition  
6 will be extremely helpful to allow Mr. Marshall to explain to the other parties how these  
7 already produced documents support his opinion.

8 Further, Mr. Marshall is a DWR employee and is being offered by DWR as its  
9 representative expert witness in this proceeding. The fact that the deposition notices may  
10 seek documents that go beyond what is in Mr. Marshall's immediate possession and may  
11 be in the possession of others at DWR is not objectionable. As an expert witness, Mr.  
12 Marshall will be and should be examined regarding potential bias or influence and the  
13 source of all information supporting his opinions. To the extent there are documents within  
14 DWR that evidence bias or otherwise refute or cast doubt on the credibility of Mr.  
15 Marshall's testimony (or alternatively provide support for the testimony) they should be  
16 produced.

17 If DWR does not believe it has sufficient time to produce the documents, it should  
18 request a continuance of the hearing or withdraw Mr. Marshall as a witness. However,  
19 the concept of allowing substantial new technical expert testimony, without related  
20 discovery, is not a legally defensible or equitable option.

### 21 **3. Cross Examination is Not the Place to Depose an Expert Witness**

22 The Hearing Officers have placed strict limits on the time for cross examination at  
23 the hearing. There is insufficient time to probe the witness to describe all of the underlying  
24 factual and analytical bases for the modeling work that forms the basis for his opinions  
25 during cross examination - nor is this even humanly possible. The modeling and datasets  
26 which purportedly support Mr. Marshall's opinions would be unwieldy to deal with during  
27 a hearing and certainly are not discrete facts that Mr. Marshall can commit to memory and  
28 realistically disclose during cross-examination.

\



1 Further, allowing Mr. Marshall to testify without a prior deposition and requiring  
2 CDWA to ask all questions of Marshall during cross to both understand and potentially  
3 discredit his opinion would unduly prejudice to the Delta parties. These parties will need  
4 the assistance of their own experts to understand Marshall's explanations and underlying  
5 data sets and analysis, which has not yet been produced.

6 Finally, requiring parties to deal with experts in the first instance on cross-  
7 examination is a huge waste of time for the Hearing Team and other parties. The purpose  
8 of the deposition is to gain a better understanding of an experts opinion so that the  
9 examination during the hearing can be limited to just the key issues necessary to identify  
10 bias or analytical error. Often, the problems with an expert opinion elicited during  
11 deposition will even convince a party to withdraw an expert prior to the hearing, which  
12 helps shorten the hearing.

#### 13 **4. The Burden of the Discovery Does Not Outweigh the Importance of the** 14 **Discovery to Resolving an Issue in the Hearing**

15 Mr. Marshall's 28 page expert testimony and related exhibits are not "limited" as  
16 DWR claims and certainly do not stay within the bounds of CCP § 2034.310 for late  
17 disclosed experts. Rather, Marshall's testimony provides independent opinions about the  
18 impact of Delta diversions on project water supplies and highly technical as well as  
19 independent contradictory opinions regarding salinity in Delta channels. Both types of  
20 independent opinions should have been provided in DWR's case in chief. If the Hearing  
21 Officers do not think the issues raised by Marshall are important to the hearing and agree  
22 the testimony is untimely, it should be stricken. If, alternatively, the Hearing Officers want  
23 to hear this new opinion testimony and deem it to address an "important issue," then DWR  
24 cannot meet its burden for a protective order and the deposition and document production  
25 must go forward. (CCP §2025.420(f)(4).)

#### 26 **D. CDWA did not Agree to Permanently Cancel Mr. Marshall's Deposition**

27 DWR incorrectly asserts CDWA canceled the prior Marshall deposition without  
28 condition. In fact, CDWA has consistently requested to depose Mr. Marshall to the extent  
he testifies.



1 This deposition was initially set in November and rescheduled to December 30<sup>th</sup>  
2 due to changes in the hearing schedule. (Spaletta Dec., ¶ 3.) DWR asked that Mr.  
3 Marshall's December 30<sup>th</sup> deposition be taken off because of unavailability. (Spaletta Dec.,  
4 ¶ 4.) DWR then asked that the reset deposition be taken off due to Marshall being  
5 withdrawn as a witness in the DWR case in chief. CDWA's counsel only agreed to this on  
6 the condition that CDWA may want to depose Marshall if he provides rebuttal testimony.  
7 (Spaletta Dec., ¶ 5).

8 CDWA's counsel reiterated her request to depose any DWR rebuttal witnesses in  
9 early February, only to have DWR be less than forthcoming about Mr. Marshall's  
10 impending testimony:

11 (CDWA Attorney): "The delta agencies will likely want to depose your  
12 rebuttal witnesses and would like to coordinate dates soon given the tight  
13 timelines. We are looking at March 1, 2, 3, or 4 in Sacramento. Can you  
14 please confirm if your rebuttal witnesses could be available on those days  
15 so that we can collectively reserve them on our calendars?"

16 (DWR): "DWR, like Westlands, has not yet decided whether it will have a  
17 rebuttal witness."

18 (Spaletta Dec. ¶¶ 6-7.)

19 12 days later - DWR served and filed the Marshall expert opinions. The 28 pages  
20 of Marshall testimony include extensive data compilations, charts and even summaries of  
21 new DSM2 simulations that are not available in the public domain (pages 22-28).

22 DWR's argument about the timing of the deposition is ironic considering the  
23 arguments we heard earlier in this proceeding that depositions should only follow  
24 submitted testimony so that they can be more narrowly tailored. Now that CDWA has  
25 adhered to this request, the opposite argument has emerged. One must question - is the  
26 objection really to the "how and when" of the deposition or are the objecting parties trying  
27 to prevent the other parties from having a fair opportunity to elicit weaknesses in the  
28 proffered testimony?

1 We urge the Hearing Officers to consider the integrity of the hearing process when  
2 ruling on this motion.

3 **IV. Conclusion**

4 The Rules of Civil Procedure are crystal clear that late disclosed expert testimony  
5 may only be admitted using a method that ensures no undue prejudice to other parties -  
6 including making the expert immediately available for deposition. (CCP §2034.720(d).)  
7 DWR cannot have it both ways. Either the Marshall testimony is allowed and Marshall  
8 must produce the underlying information and sit for deposition or the testimony is out.

9 If the Hearing Officers decide the testimony will not be stricken and allow the  
10 deposition, then we respectfully request that the Hearing Officers also consider pushing  
11 the hearing dates back to allow time for the depositions and for the parties to properly and  
12 efficiently organize the presentation of evidence at the hearings.

13 Respectfully submitted,

14 Dated: March 2, 2016

SPALETTA LAW PC

16 By:

15   
17 JENNIFER L. SPALETTA  
18 Attorney for Central Delta Water Agency

19 Dated: March 2, 2016

HARRIS, PERISHO & RUIZ

20   
21 S. DEAN RUIZ  
22 Attorney for South Delta Water Agency

23 Dated: March 2, 2016

HERUM\CRABTREE\SUNTAG

24   
25 JEANNE M. ZOLEZZI  
26 Attorney for the West Side Irrigation  
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1 **Supporting Declaration of Jennifer L. Spaletta**

2 1. I, Jennifer L. Spaletta am an attorney duly licensed to practice law in the  
3 State of California and co-counsel of record for Central Delta Water Agency in these two  
4 enforcement proceedings. The matters stated herein are based upon my personal  
5 knowledge, which I would and could testify to if called upon to do so.

6 2. Paul Marshall was originally listed by DWR as a case-in-chief witness.  
7 WSID, BBID and the Delta Agencies first set Paul Marshall's deposition for November  
8 23<sup>rd</sup>, after meeting and conferring with DWR for available dates.

9 3. Due to holiday schedules and changes in the hearing schedule, the  
10 Marshall deposition was continued to December 30<sup>th</sup>, again after meeting and conferring  
11 with DWR for available dates. I personally participated in this meet and confer effort.

12 4. On December 9, 2015, DWR's counsel informed me by e-mail that Mr.  
13 Marshall was no longer available on December 30<sup>th</sup> for the deposition and the parties  
14 started meeting and conferring on next available dates in late January or early February.  
15 The parties ended up agreeing to reset the deposition for February 2, 2016. (See  
16 Exhibit A hereto.)

17 5. On January 19, 2016, DWR submitted a revised NOI, withdrawing its case-  
18 in-chief and removing Mr. Marshall as a listed witness. DWR's counsel then contacted  
19 me by e-mail on January 25, 2016 stating: "You mentioned that you and the other  
20 parties that noticed the deposition were thinking about cancelling it, because DWR is no  
21 longer submitting a case-in-chief. Do you have an update?" I responded: "I do not see  
22 a need to depose Paul at this point...If Paul submits rebuttal testimony, we may seek a  
23 deposition then." BBID's counsel responded: "Same for BBID." (See Exhibit A hereto.)

24 6. On February 9, 2016, as the deadline for submission of rebuttal testimony  
25 got closer, I e-mailed counsel for DWR and SWC, stating: "WSID, BBID and the delta  
26 agencies will likely want to depose your rebuttal witnesses and would like to coordinate  
27 dates soon given the tight timelines. We are looking at March 1, 2, 3, or 4 in  
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1 Sacramento. Can you please confirm if your rebuttal witnesses could be available on  
2 those days so that we can collectively reserve them on our calendars?" See Exhibit B  
3 hereto.

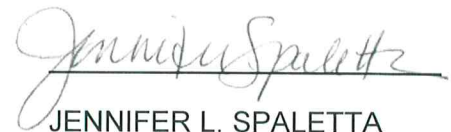
4 7. On February 10, 2016, DWR's counsel responded: "DWR, like Westlands,  
5 has not yet decided whether it will have a rebuttal witness." See Exhibit B hereto.

6 8. On February 22, 2016 (twelve days later) DWR submitted Paul Marshall's  
7 28 page expert report as a rebuttal exhibit.

8 9. Exhibits A and B hereto are true and correct copies of e-mail chains  
9 evidencing the above described conversations that I have maintained as part of my  
10 business records.

11 I declare under penalty of perjury pursuant to the laws of the state of California  
12 that the foregoing is true and correct.

13 Executed this 2<sup>nd</sup> day of March, 2016 in Lodi, California.

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16 JENNIFER L. SPALETTA  
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**EXHIBIT A TO SPALETTA DECLARATION**

## Jennifer Spaletta

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**From:** McGinnis, Robin C.@DWR <Robin.McGinnis@water.ca.gov>  
**Sent:** Thursday, January 28, 2016 4:17 PM  
**To:** Jeanne Zolezzi; Dan Kelly; S. Dean Ruiz; Jennifer Spaletta  
**Subject:** RE: Deposition Scheduling for Paul Marshall

Thanks all!

**Robin McGinnis**

Attorney  
Office of the Chief Counsel  
Department of Water Resources  
Direct: (916) 657-5400  
robin.mcginnis@water.ca.gov

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**From:** Jeanne Zolezzi [mailto:JZOLEZZI@herumcrabtree.com]  
**Sent:** Thursday, January 28, 2016 3:10 PM  
**To:** McGinnis, Robin C.@DWR; Dan Kelly; S. Dean Ruiz; Jennifer Spaletta  
**Subject:** RE: Deposition Scheduling for Paul Marshall

Yes – I agree.

*Jeanne M. Zolezzi*

HERUM | CRABTREE | SUNTAG  
ATTORNEYS

Jeanne M. Zolezzi  
Attorney-at-Law

T: 209.472.7700 \ F: 209.472.7986  
5757 PACIFIC AVENUE, SUITE 222 STOCKTON, CA 95207  
[www.herumcrabtree.com](http://www.herumcrabtree.com) \ [jzolezzi@herumcrabtree.com](mailto:jzolezzi@herumcrabtree.com)

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**From:** McGinnis, Robin C.@DWR [mailto:Robin.McGinnis@water.ca.gov]  
**Sent:** Thursday, January 28, 2016 3:02 PM  
**To:** Dan Kelly; S. Dean Ruiz; Jennifer Spaletta; Jeanne Zolezzi  
**Subject:** RE: Deposition Scheduling for Paul Marshall

Thanks Dan, Dean, and Jen. That just leaves Jeanne. Would you also like to cancel Paul's deposition, Jeanne?

Robin McGinnis  
Attorney  
Office of the Chief Counsel



Department of Water Resources  
Direct: (916) 657-5400  
robin.mcginnis@water.ca.gov

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---

**From:** Dan Kelly [mailto:dkelly@somachlaw.com]  
**Sent:** Thursday, January 28, 2016 6:18 AM  
**To:** S. Dean Ruiz  
**Cc:** Jennifer Spaletta; McGinnis, Robin C.@DWR; Jeanne Zolezzi  
**Subject:** Re: Deposition Scheduling for Paul Marshall

Same for BBID.

Regards,  
Dan

On Jan 27, 2016, at 10:58 PM, S. Dean Ruiz <dean@hprlaw.net> wrote:

I agree on behalf of SDWA.

S. Dean Ruiz, Esq.  
HARRIS, PERISHO & RUIZ  
ATTORNEYS AT LAW  
Telephone: (209) 957-4254  
Facsimile: (209) 957-5338  
[www.harrisperishoruiz.com](http://www.harrisperishoruiz.com)

---

**From:** Jennifer Spaletta [mailto:jennifer@spalettalaw.com]  
**Sent:** Wednesday, January 27, 2016 6:05 PM  
**To:** McGinnis, Robin C.@DWR  
**Cc:** Jeanne Zolezzi; dkelly@somachlaw.com; S. Dean Ruiz  
**Subject:** Re: Deposition Scheduling for Paul Marshall

Hi Robin: I do not see a need to depose Paul at this point. I will let the others speak for their clients. If Paul submits rebuttal testimony, we may seek a deposition then.

Thanks, Jen

Jennifer L. Spaletta  
SPALETTA LAW PC  
[Jennifer@spalettalaw.com](mailto:Jennifer@spalettalaw.com)

Sent from iPhone, please excuse typos

On Jan 25, 2016, at 11:02 AM, McGinnis, Robin C.@DWR <Robin.McGinnis@water.ca.gov> wrote:

Jen,

Thanks for talking to me last week about Paul's deposition. You mentioned that you and the other parties that noticed the deposition were thinking about cancelling it, because DWR is no longer submitting a case-in-chief. Do you have an update?

Robin

Robin McGinnis  
Attorney  
Office of the Chief Counsel  
Department of Water Resources  
Direct: (916) 657-5400  
robin.mcginnis@water.ca.gov

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---

**From:** Jennifer Spaletta [<mailto:jennifer@spalettalaw.com>]  
**Sent:** Saturday, January 16, 2016 4:14 PM  
**To:** McGinnis, Robin [C.@DWR](mailto:C.@DWR)  
**Cc:** Jeanne Zolezzi; [dkelly@somachlaw.com](mailto:dkelly@somachlaw.com); [dean@hprlaw.net](mailto:dean@hprlaw.net)  
**Subject:** RE: Deposition Scheduling for Paul Marshall

Robin – We will be sending out an updated notice for Feb. 2<sup>nd</sup>. Thanks, Jen

**JENNIFER L. SPALETTA**  
Attorney-at-Law  
[Jennifer@spalettalaw.com](mailto:Jennifer@spalettalaw.com)

**SPALETTA LAW PC**  
T: 209-224-5568  
F: 209-224-5589  
C: 209-481-9795  
Mailing: PO Box 2660 Lodi CA 95241  
Office: 225 W. Oak Lodi, CA 95240

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**From:** McGinnis, Robin [C.@DWR](mailto:C.@DWR) [<mailto:Robin.McGinnis@water.ca.gov>]  
**Sent:** Wednesday, December 09, 2015 1:46 PM  
**To:** Jennifer Spaletta  
**Cc:** Jeanne Zolezzi; [dkelly@somachlaw.com](mailto:dkelly@somachlaw.com)  
**Subject:** RE: Deposition Scheduling for Paul Marshall

Jen,

He's available any day during those two weeks.

Robin



Robin McGinnis  
Attorney  
Office of the Chief Counsel  
Department of Water Resources  
Direct: (916) 657-5400  
robin.mcginis@water.ca.gov

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---

**From:** Jennifer Spaletta [<mailto:jennifer@spalettalaw.com>]  
**Sent:** Wednesday, December 09, 2015 11:23 AM  
**To:** McGinnis, Robin C.@DWR  
**Cc:** Jeanne Zolezzi; [dkelly@somachlaw.com](mailto:dkelly@somachlaw.com)  
**Subject:** RE: Deposition Scheduling for Paul Marshall

Robin – Let's see what other dates are options. What is Paul's availability the last week in January or first week in February? Thanks, Jen

**JENNIFER L. SPALETTA**  
Attorney-at-Law  
[Jennifer@spalettalaw.com](mailto:Jennifer@spalettalaw.com)

**SPALETTA LAW PC**  
T: 209-224-5568  
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Mailing: PO Box 2660 Lodi CA 95241  
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**From:** McGinnis, Robin C.@DWR [<mailto:Robin.McGinnis@water.ca.gov>]  
**Sent:** Wednesday, December 09, 2015 11:16 AM  
**To:** Jennifer Spaletta  
**Cc:** Jeanne Zolezzi; [dkelly@somachlaw.com](mailto:dkelly@somachlaw.com)  
**Subject:** RE: Deposition Scheduling for Paul Marshall

Jen,

Paul Marshall is no longer available to be deposed on December 30. Do you want to reschedule now, or do you want to wait until after the hearing teams finalize the new hearing schedules? I remember we rescheduled so that the deposition would take place after the cases-in-chief were due, and now it appears they will be due on January 19, but this is not a set deadline yet.

Robin

Robin McGinnis

Attorney  
Office of the Chief Counsel  
Department of Water Resources  
Direct: (916) 657-5400  
robin.mcginis@water.ca.gov

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**From:** Jennifer Spaletta [<mailto:jennifer@spalettalaw.com>]  
**Sent:** Monday, November 23, 2015 3:06 PM  
**To:** McGinnis, Robin C.@DWR; Jeanne Zolezzi; [dkelly@somachlaw.com](mailto:dkelly@somachlaw.com)  
**Cc:** Tauriainen, Andrew@Waterboards; [dantejr@pacbell.net](mailto:dantejr@pacbell.net); [dean@hprlaw.net](mailto:dean@hprlaw.net); [dohanlon@kmtg.com](mailto:dohanlon@kmtg.com); [ernie.mona@waterboards.ca.gov](mailto:ernie.mona@waterboards.ca.gov); Frances.Spivy-Weber@waterboards.ca.gov; Janelle Krattiger; [Jherrlaw@aol.com](mailto:Jherrlaw@aol.com); [jonathan.knapp@sfgov.org](mailto:jonathan.knapp@sfgov.org); [kharrigfeld@herumcrabtree.com](mailto:kharrigfeld@herumcrabtree.com); [ngmplcs@pacbell.net](mailto:ngmplcs@pacbell.net); [pwilliams@westlandswater.org](mailto:pwilliams@westlandswater.org); [rakroyd@kmtg.com](mailto:rakroyd@kmtg.com); [robin.mcginis@water.ca.gov](mailto:robin.mcginis@water.ca.gov); [smorris@swc.org](mailto:smorris@swc.org); [vkincaid@olaughlinparis.com](mailto:vkincaid@olaughlinparis.com); Unit, Wr\_Hearing@Waterboards  
**Subject:** RE: Deposition Scheduling for Paul Marshall

Robin – This will confirm that Mr. Marshall's deposition will be at 9:30am on December 30<sup>th</sup> at the Somach office. The deadline for production will also be extended to that same time. However, if you can produce some or all of the documents in advance, it would be greatly appreciated and will make the deposition go much faster. Thank you for your cooperation regarding this matter, it is greatly appreciated.

Jen

**JENNIFER L. SPALETTA**  
Attorney-at-Law  
[Jennifer@spalettalaw.com](mailto:Jennifer@spalettalaw.com)

**SPALETTA LAW PC**  
T: 209-224-5568  
F: 209-224-5589  
C: 209-481-9795  
Mailing: PO Box 2660 Lodi CA 95241  
Office: 225 W. Oak Lodi, CA 95240

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**From:** McGinnis, Robin C.@DWR [<mailto:Robin.McGinnis@water.ca.gov>]  
**Sent:** Monday, November 23, 2015 2:40 PM  
**To:** Jennifer Spaletta; Jeanne Zolezzi; [dkelly@somachlaw.com](mailto:dkelly@somachlaw.com)  
**Cc:** Tauriainen, Andrew@Waterboards; [dantejr@pacbell.net](mailto:dantejr@pacbell.net); [dean@hprlaw.net](mailto:dean@hprlaw.net); [dohanlon@kmtg.com](mailto:dohanlon@kmtg.com); [ernie.mona@waterboards.ca.gov](mailto:ernie.mona@waterboards.ca.gov); Frances.Spivy-Weber@waterboards.ca.gov; Janelle Krattiger; [Jherrlaw@aol.com](mailto:Jherrlaw@aol.com); [jonathan.knapp@sfgov.org](mailto:jonathan.knapp@sfgov.org); [kharrigfeld@herumcrabtree.com](mailto:kharrigfeld@herumcrabtree.com); [ngmplcs@pacbell.net](mailto:ngmplcs@pacbell.net); [pwilliams@westlandswater.org](mailto:pwilliams@westlandswater.org); [rakroyd@kmtg.com](mailto:rakroyd@kmtg.com); [robin.mcginis@water.ca.gov](mailto:robin.mcginis@water.ca.gov);



[smorris@swc.org](mailto:smorris@swc.org); [vkincaid@olaughlinparis.com](mailto:vkincaid@olaughlinparis.com); Unit, Wr\_Hearing@Waterboards  
**Subject:** RE: Deposition Scheduling for Paul Marshall

Dan, Jeanne, and Jennifer,

DWR does not need amended deposition notices, but please confirm the starting time, location, and that DWR's deadline for producing documents is also extended to December 30. We plan to make documents available before then.

Robin

**Robin McGinnis**  
Attorney  
Office of the Chief Counsel  
Department of Water Resources  
Direct: (916) 657-5400  
[robin.mcginis@water.ca.gov](mailto:robin.mcginis@water.ca.gov)

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**From:** Jennifer Spaletta [<mailto:jennifer@spalettalaw.com>]  
**Sent:** Monday, November 23, 2015 2:09 PM  
**To:** McGinnis, Robin C.@DWR  
**Cc:** Jeanne Zolezzi; Tauriainen, Andrew@Waterboards; [dantejr@pacbell.net](mailto:dantejr@pacbell.net); [dean@hprlaw.net](mailto:dean@hprlaw.net); [dkelly@somachlaw.com](mailto:dkelly@somachlaw.com); [dohanlon@kmtg.com](mailto:dohanlon@kmtg.com); [ernie.mona@waterboards.ca.gov](mailto:ernie.mona@waterboards.ca.gov); [Frances.Spivy-Weber@waterboards.ca.gov](mailto:Frances.Spivy-Weber@waterboards.ca.gov); Janelle Krattiger; [Jherrlaw@aol.com](mailto:Jherrlaw@aol.com); [jonathan.knapp@sfgov.org](mailto:jonathan.knapp@sfgov.org); [kharrigfeld@herumcrabtree.com](mailto:kharrigfeld@herumcrabtree.com); [ngmplcs@pacbell.net](mailto:ngmplcs@pacbell.net); [pwilliams@westlandswater.org](mailto:pwilliams@westlandswater.org); [rakroyd@kmtg.com](mailto:rakroyd@kmtg.com); [robin.mcginis@water.ca.gov](mailto:robin.mcginis@water.ca.gov); [smorris@swc.org](mailto:smorris@swc.org); [vkincaid@olaughlinparis.com](mailto:vkincaid@olaughlinparis.com); Unit, Wr\_Hearing@Waterboards  
**Subject:** Re: Deposition Scheduling for Paul Marshall

All:

WSID, BBID and the Delta Agencies have decided to reset the Marshall deposition for December 30th. Please be advised there will not be a deposition tomorrow. We are still scheduled for the continuation of Mr. Howard on Wednesday at 8am.

Thank you,

Jennifer L. Spaletta  
SPALETTA LAW PC  
[Jennifer@spalettalaw.com](mailto:Jennifer@spalettalaw.com)

Sent from iPhone, please excuse typos

On Oct 30, 2015, at 11:48 AM, McGinnis, Robin C.@DWR  
<[Robin.McGinnis@water.ca.gov](mailto:Robin.McGinnis@water.ca.gov)> wrote:

<image002.gif>

Jeanne,

Paul Marshall is available November 23, 24, and 30.

Robin

**Robin McGinnis**  
Attorney  
Office of the Chief Counsel  
Department of Water Resources  
Direct: (916) 657-5400  
robin.mcginis@water.ca.gov

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**From:** Jeanne Zolezzi [<mailto:JZOLEZZI@herumcrabtree.com>]  
**Sent:** Thursday, October 29, 2015 5:58 PM  
**To:** McGinnis, Robin [C.@DWR](mailto:C.@DWR)  
**Cc:** Tauriainen, Andrew@Waterboards; [dantejr@pacbell.net](mailto:dantejr@pacbell.net);  
[dean@hprlaw.net](mailto:dean@hprlaw.net); [dkelly@somachlaw.com](mailto:dkelly@somachlaw.com); [dohanlon@kmtg.com](mailto:dohanlon@kmtg.com);  
'[ernie.mona@waterboards.ca.gov](mailto:ernie.mona@waterboards.ca.gov)'; 'Frances.Spivy-  
[Weber@waterboards.ca.gov](mailto:Weber@waterboards.ca.gov)'; Janelle Krattiger;  
[jennifer@spalettalaw.com](mailto:jennifer@spalettalaw.com); 'Jherrlaw@aol.com';  
'[jonathan.knapp@sfgov.org](mailto:jonathan.knapp@sfgov.org)'; [kharrigfeld@herumcrabtree.com](mailto:kharrigfeld@herumcrabtree.com);  
[ngmplcs@pacbell.net](mailto:ngmplcs@pacbell.net); 'pwilliams@westlandswater.org';  
'[rakroyd@kmtg.com](mailto:rakroyd@kmtg.com)'; 'robin.mcginis@water.ca.gov'; 'smorris@swc.org';  
[vkincaid@olaughlinparis.com](mailto:vkincaid@olaughlinparis.com); Unit, [Wr\\_Hearing@Waterboards](mailto:Wr_Hearing@Waterboards)  
**Subject:** Deposition Scheduling for Paul Marshall  
**Importance:** High

Robin,

Can you please provide possible dates when Paul Marshall would be available for deposition? The following dates in November are unavailable: 5, 9, 12, 13, 16, 18, 19, 20 and 25. I look forward to hearing from you at your earliest convenience.

*Jeanne M. Zolezzi*

<image003.jpg>  
Jeanne M. Zolezzi  
Attorney-at-Law

T: 209.472.7700 \ F: 209.472.7986  
5757 PACIFIC AVENUE, SUITE 222 STOCKTON, CA 95207  
[www.herumcrabtree.com](http://www.herumcrabtree.com) \ [jzolezzi@herumcrabtree.com](mailto:jzolezzi@herumcrabtree.com)

**Connect to Us:** <image004.jpg><image005.jpg>

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**EXHIBIT B TO SPALETTA DECLARATION**

## Jennifer Spaletta

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**From:** McGinnis, Robin C.@DWR <Robin.McGinnis@water.ca.gov>  
**Sent:** Wednesday, February 10, 2016 4:37 PM  
**To:** Jennifer Spaletta  
**Cc:** Tauriainen, Andrew@Waterboards; dkelly@somachlaw.com; jzolezzi@herumcrabtree.com; dean@hprlaw.net; towater@olaughlinparis.com; Philip Williams; smorris@swc.org  
**Subject:** RE: March 1-4 Depositions of Rebuttal Witnesses

Jen,

DWR, like Westlands, has not yet decided whether it will have a rebuttal witness.

Robin

Robin McGinnis  
Attorney  
Office of the Chief Counsel  
Department of Water Resources  
Direct: (916) 657-5400  
robin.mcginis@water.ca.gov

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**From:** Philip Williams [<mailto:pwilliams@westlandswater.org>]  
**Sent:** Wednesday, February 10, 2016 4:28 PM  
**To:** 'Jennifer Spaletta'; McGinnis, Robin C.@DWR; smorris@swc.org  
**Cc:** Tauriainen, Andrew@Waterboards; dkelly@somachlaw.com; jzolezzi@herumcrabtree.com; dean@hprlaw.net; towater@olaughlinparis.com  
**Subject:** RE: March 1-4 Depositions of Rebuttal Witnesses

Hi Jen,

Westlands has not decided whether we will have a rebuttal witness, or, if we do, who it will be. We are researching this very point now. We will of course have to have made those decisions by the deadline of February 22 for us to provide notice to the State Water Board and the parties regarding the status of any rebuttal witness.

v/r,  
Phil

---

**From:** Jennifer Spaletta [<mailto:jennifer@spalettalaw.com>]  
**Sent:** Tuesday, February 9, 2016 2:52 PM  
**To:** [robin.mcginis@water.ca.gov](mailto:robin.mcginis@water.ca.gov); smorris@swc.org; pwilliams@westlandswater.org  
**Cc:** Tauriainen, Andrew@Waterboards; dkelly@somachlaw.com; jzolezzi@herumcrabtree.com; dean@hprlaw.net; towater@olaughlinparis.com  
**Subject:** March 1-4 Depositions of Rebuttal Witnesses

Hi Robin, Stefanie and Phil:

I am writing regarding depositions of your rebuttal witnesses in the WSID/BBID hearings. WSID, BBID and the delta agencies will likely want to depose your rebuttal witnesses and would like to coordinate dates soon given the tight timelines. We are looking at March 1, 2, 3 or 4 in Sacramento. Can you please confirm if your rebuttal witnesses could be available on those days so that we can collectively reserve them on our calendars?

Thanks! Jen

**JENNIFER L. SPALETTA**

Attorney-at-Law

[Jennifer@spalettalaw.com](mailto:Jennifer@spalettalaw.com)

**SPALETTA LAW PC**

T: 209-224-5568

F: 209-224-5589

C: 209-481-9795

Mailing: PO Box 2660 Lodi CA 95241

Office: 225 W. Oak Lodi, CA 95240

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