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10 Attorneys for State Water Contractors

11
12 **BEFORE THE**
13 **CALIFORNIA STATE WATER RESOURCES CONTROL BOARD**

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

STATE WATER CONTRACTORS'
MOTION FOR PROTECTIVE ORDER

18 In the Matter of ENFORCEMENT ACTION
19 ENF01951 -ADMINISTRATIVE CIVIL
20 LIABILITY COMPLAINT REGARDING
21 UNAUTHORIZED DIVERSION OF WATER
22 FROM THE INTAKE CHANNEL TO THE
BANKS PUMPING PLANT (FORMERLY
ITALIAN SLOUGH) IN CONTRA COSTA
COUNTY

23
24 State Water Contractors ("SWC") submit this motion for protective order, pursuant to
25 California Code of Civil Procedure Section 2025.420, to the notices of deposition of Paul
26 Hutton and accompanying requests for production of documents served by Byron-Bethany
27 Irrigation District ("BBID") and the Central Delta Water Agency ("CDWA") and South Delta
28

1 Water Agency (“SDWA”) in the above-referenced proceedings.¹ True and correct copies of
2 the notices of deposition are attached to Morris Declaration as exhibits 1 and 2
3 respectively.

4 State Water Contractors request a protective order prohibiting the deposition of
5 rebuttal witness Paul Hutton and the production of documents (Civil Code of Proc.
6 § 2025.420(1)). In the alternative, SWC request a protective order either (1) limiting the
7 scope of the deposition to Dr. Hutton’s rebuttal testimony and prohibiting the production of
8 documents as unduly burdensome (Civil Code of Proc. § 2025.420(10), (11).); or (2)
9 limiting the scope of both the deposition and production of documents to Dr. Hutton’s
10 rebuttal testimony and the production of documents to documents reasonably calculated to
11 lead to admissible evidence (Civil Code of Proc. § 2025.420(10).) If a deposition is
12 permitted to go forward, SWC also requests a protective order limiting the use of any such
13 deposition transcript solely to these enforcement proceedings.

14 I. INTRODUCTION

15 Even though all written direct and rebuttal testimony and exhibits have been
16 submitted at this point in the enforcement proceedings, BBID, CDWA and SDWA seek to
17 exploit the discovery process by noticing the deposition of SWC rebuttal witness, Dr. Paul
18 Hutton, with extensive production of documents. The noticing parties may argue that the
19 discovery is needed in order to prepare for the cross-examination of Dr. Hutton, which will
20 be limited to the scope of his rebuttal testimony. In reality, however, the noticing parties are
21 engaging in a “fishing expedition” for information and documents beyond the scope of Dr.
22 Hutton’s actual rebuttal testimony and to harass and annoy the SWC and the Metropolitan
23 Water District of Southern California (“MWD”).

24 Regardless of motive, the undue burden and expense of producing Dr. Hutton for
25

26 ¹ Attached is the Declaration of Stefanie Morris (“Morris Decl.”) attesting to the SWC’s
27 reasonable and good faith attempt at an informal resolution of issues raised by the
28 deposition notices served by Byron-Bethany Irrigation District and the Central Delta Water
Agency and South Delta Water Agency, as required by California Code of Civil Procedure
§ 2025.420(a).

1 deposition as well as production of a potentially large volume of documents, some of which
2 are not relevant and most of which are not in the possession and control of Dr. Hutton,
3 mere weeks before the commencement of the hearing, far outweighs any purported
4 importance of such discovery to the noticing parties. Moreover, any information sought
5 from Dr. Hutton at his deposition would be duplicative of the information the noticing parties
6 could obtain through the opportunity for cross-examination of rebuttal witnesses afforded by
7 the evidentiary hearing process. As such, good cause exists for the issuance of the SWC's
8 requested protective order.

9 **II. STATEMENT OF FACTS**

10 On July 16, 2015, the State Water Resources Control Board ("Water Board") issued
11 a draft Cease and Desist Order to West Side Irrigation District ("WSID") for violations or
12 threatened violations of Water Code Section 1052, which prohibits unauthorized diversions
13 of water. In response, WSID requested a formal hearing on August 7, 2015. On July 20,
14 2015, the State Water Resources Control Board issued an Administrative Civil Liability
15 Complaint to BBID relating to its diversions from the intake channel to the Banks Pumping
16 Plant (formerly Italian Slough) after June 12, 2015. In response to the issued ACL, BBID
17 requested a formal hearing on August 6, 2015.

18 The initial public hearing notices issued in each of the respective proceeding did not
19 contemplate submission of rebuttal evidence prior to the commencement of the evidentiary
20 hearing. (See Notices of Public Hearing dated August 19, 2015 (BBID) and September 1,
21 2015 and November 10, 2015 (WSID).) On October 2, 2015, via email, the hearing officer
22 in the BBID matter continued the hearing date to March 21, 2016 and set a deadline for
23 submission of written testimony and exhibits for cases-in-chief of January 18, 2016 and a
24 deadline for submission of written rebuttal testimony and exhibits of February 22, 2016. A
25 revised notice of public hearing was issued on October 20, 2015 correcting the deadline for
26 submission of cases-in-chief to January 19, 2016. By ruling on December 16, 2015, the
27 hearing officer in the enforcement proceeding against WSID consolidated the proceeding
28 with the BBID enforcement proceeding adopting the deadlines for submittal of cases-in

1 chief and rebuttal testimony in that proceeding. A Notice of Revised Schedule for Public
2 Hearings for both proceedings was issued on January 8, 2016.

3 On January 19, 2016, written testimony and exhibits composing the cases-in-chief of
4 the Prosecution Team, BBID and WSID (including South Delta Water Agency and Central
5 Delta Water Agency) were submitted. On January 25, 2016, written rebuttal testimony and
6 exhibits were submitted by parties including SWC, which submitted the written testimony of
7 Paul Hutton as exhibit SWC0001 in addition to exhibits SWC0002-0007.

8 On February 23, 2016, attorneys for Central Delta Water Agency ("CDWA") and
9 South Delta Water Agency ("SDWA") served a "Notice of Taking Deposition of Paul
10 Hutton," which included a request for production of documents. On February 24, 2016,
11 attorneys for Byron-Bethany Irrigation served a "Notice of Deposition of Paul Hutton and
12 Request for Production of Documents." In both, the deposition is noticed for March 7, 2016
13 at 9:30 a.m. in the same location. (See Morris Decl. Exhibits 1 and 2.)

14 **III. ARGUMENT**

15 Administrative hearings and discovery procedures are governed by the Water Code
16 (Water Code §§ 1075 et seq.) and Water Board regulations (23 C.C.R §§ 648 et seq.),
17 which incorporate portions of the Administrative Procedure Act (Gov't Code §§ 11400 et
18 seq.; 11513), the Evidence Code (Evidence Code §§ 801-805) and the Civil Discovery Act
19 (Code of Civil Proc. § 2016.010 et seq.). The Board or any party to a proceeding before
20 the Board may take the deposition of witnesses in accordance with the Civil Discovery Act.
21 (Water Code § 1100).

22 However, the right to discovery, including by deposition, is not unlimited. The
23 information sought to be discovered must be relevant to the subject matter involved or
24 reasonably calculated to lead to the discovery of admissible evidence. (Code of Civil Proc.
25 § 2017.010). Further, discovery may be limited if it is determined that the burden, expense
26 or intrusiveness of the discovery sought outweighs the likelihood that the information
27 sought will lead to the discovery of admissible evidence. (Code of Civil Proc. §
28 2017.020(a); *Borse v. Superior Court* (1970) 7 Cal.App.3d 286 [in determining whether to

1 limit discovery, the relative importance of the information sought should be weighed against
2 the burden which production entails].) Similarly, discovery can also be restricted if it is
3 determined that the discovery sought is unreasonably cumulative or duplicative or is
4 obtainable from some other source that is more convenient, less burdensome, or less
5 expensive. (Code of Civil Proc. § 2019.030(a)(1).) In the case of depositions specifically,
6 the hearing officer may make any order that protects a party or deponent from unwarranted
7 annoyance, embarrassment, or oppression, or undue burden or expense. (Code of Civil
8 Proc. § 2025.420(b).) It is a misuse of the discovery process to employ any discovery
9 method in a manner or to an extent that causes unwarranted annoyance, embarrassment,
10 or oppression or undue burden and expense. (Code of Civil Proc. § 2023.010(c).)

11 **A. Additional Discovery Following Submission of All Written Testimony
12 and Exhibits Was Not Contemplated by the Parties or Hearing Officers.**

13 Prior to the submission of written rebuttal testimony, there had been no
14 contemplation that additional discovery would be conducted *following* the submission of
15 both the cases-in-chief and rebuttal testimony and exhibits. Generally, rebuttal testimony is
16 not even required to be submitted in writing and rebuttal testimony and exhibits are not
17 required to be submitted prior to the start of the hearing. (See 23 C.C.R. § 648.4(f).) For
18 example, in the enforcement proceeding against WSID, submission of rebuttal testimony
19 was initially scheduled after the commencement of the evidentiary hearing. (See Notice of
20 Public Hearing dated November 10, 2015, p. 2.) As stated by Hearing Officer Doduc, the
21 purpose of requiring the submittal of written rebuttal testimony and exhibits before
22 presented at hearing was to improve hearing efficiency.² (September 25, 2015 Pre-
23 Hearing Conference Transcript, p. 45:10-16.)

24 Further, no party proposed to conduct discovery after the submission of all written
25 testimony and exhibits. In the prehearing conferences to the proceedings, a number of

26 ² At the prehearing conference in the BBID hearing, Ms. Spaletta, attorney for CDWA and
27 SDWA, argued that rebuttal evidence could not even be submitted in advance of the
28 hearing because a party needed to see what is presented at the hearing first. (September
25, 2015 Pre-Hearing Conference Transcript, p. 46:7-14.)

1 parties argued for time to conduct extensive discovery prior to the submission of testimony
2 to enable the preparation of their cases-in-chief, the timing of which was opposed by the
3 Prosecution Team. (See e.g., September 25, 2015 Pre-Hearing Conference Transcript, pp.
4 18:24-20:3, 38:11-39:4; October 19, 2015 Pre-Hearing Conference Transcript, pp. 16:7-
5 18:14, 23:7-24:13.) Mr. Kelly, attorney for BBID, stated that he anticipated completing all
6 discovery prior to the submittal of BBID's direct written testimony. (October 19, 2015 Pre-
7 Hearing Conference Transcript, p. 43:8-24.) In fact, continuances of the hearing dates
8 were provided, in part, to specifically to allow the parties discovery prior to the submission
9 of direct written testimony. (See October 2, 2015 hearing officer's email addressing
10 procedural issues in the BBID enforcement proceeding, p. 1; October 23, 2015 procedural
11 ruling in the WSID enforcement proceeding, p. 2.) No allowances were made for the
12 conduct of discovery after the submittal of rebuttal testimony just prior to the hearing.

13 **B. The Information Sought by Noticing Parties through the Deposition of**
14 **Paul Hutton is Duplicative of Information Already Available in a More**
15 **Convenient, Less Burdensome and Less Expensive Manner**

16 The hearing procedures adopted for the enforcement proceedings fully provide the
17 noticing parties with the ability to gain the information sought regarding Dr. Hutton's rebuttal
18 testimony in a more convenient, less burdensome and less expensive manner than noticing
19 a continuing deposition of Dr. Hutton³ with a request for the production of extensive
20 documents. (Code of Civil Proc. § 2019.030(a)(1); Morris Decl., Exhibit 2.) As of the date
21 of service of the deposition notices, BBID, CDWA and SDWA were already in possession
22 of Dr. Hutton's submitted written rebuttal testimony and documents relied on and discussed
23 in his testimony which were submitted as Exhibits SWC0002-0007. Further, as required by
24 hearing procedures, Dr. Hutton will be made available to all parties for cross-examination
25 on his rebuttal testimony at the evidentiary hearing, providing parties with the opportunity to

26 ³ Both notices of deposition set the deposition for March 7, 2016 at 9:30 a.m. in
27 Sacramento, but CDWA's and SDWA's notice provides that if the deposition is not
28 concluded on March 7, 2016, it "will be continued from day-to-day thereafter at the same
place, excluding weekends and legal holidays, until completed." (Morris Decl., Exhibit 2, p.
2.)

1 question Dr. Hutton concerning the bases for his testimony.

2 For these reasons, the information sought by the noticing parties is duplicative of
3 information already available to the parties in a manner more convenient, less burdensome,
4 and less expensive, namely the submission of written rebuttal testimony prior to the
5 evidentiary hearing and the opportunity to cross-examine all rebuttal witnesses during the
6 hearing. (Code of Civil Proc. § 2019.030(a)(1).) As Hearing Officer Doduc noted in her
7 November 25, 2016 procedural ruling (p. 5), because the State Water Board's hearing
8 procedures require disclosure of evidence in advance, allow cross-examination of
9 witnesses not limited to the scope of their direct testimony, and do not strictly follow the
10 rules of evidence applicable to civil actions, the burden and cost of pre-hearing discovery
11 and the likelihood that the same information could be obtained through other, less
12 expensive means, typically outweigh the expected benefit to the discovering party.

13 **C. The Noticed Deposition Constitutes an Undue Burden and Expense on**
14 **SWC that Will Not Lead to the Discovery of Admissible Evidence.**

15 The deposition of Paul Hutton and the request for production of documents also
16 constitute an undue burden and expense on SWC that far outweighs the likelihood that any
17 of the information sought will lead to the discovery of any further admissible evidence.
18 ((Code of Civil Proc. §§ 2017.020(a); 2025.420(b).) At this point in the proceedings, all of
19 the direct and rebuttal written testimony and exhibits have been submitted in the
20 consolidated proceedings per the adopted procedural deadlines. Nothing in the documents
21 or the deposition testimony sought to be produced will contribute to the admission of
22 additional evidence, in particular for the cases-in-chief. (See Notices of Public Hearing
23 dated August 19, 2015 (BBID) and September 1, 2015 (WSID); October 2, 2015 hearing
24 officer's email addressing procedural issues in the BBID enforcement proceeding, p. 4.)

25 If the noticing parties simply seek information regarding Dr. Hutton's rebuttal
26 testimony, the hearing procedures provide each party with the opportunity to cross-examine
27 rebuttal witnesses. By noticing Dr. Hutton's deposition, however, the noticing parties seek
28 the ability to question Dr. Hutton, for hours or days, in advance of the evidentiary hearing,

1 on topics ranging beyond the scope of his rebuttal testimony. For example, BBID seeks to
2 question Dr. Hutton not only on his actual rebuttal testimony but on any facts, opinions or
3 documents that more broadly refer to or relate to his testimony. (See Morris Decl, Exhibit
4 2, p. 1.)

5 In addition, the noticing parties seek the production of documents in addition to
6 those documents submitted as exhibits by SWC (and cited by Dr. Hutton in his testimony).
7 The deposition notices request the production of not only documents concerning or relating
8 to Dr. Hutton's rebuttal testimony but documents well beyond the scope of Dr. Hutton's
9 rebuttal testimony and also, inappropriately, documents not within the possession or control
10 of Dr. Hutton. These include documents in the possession of SWC, representatives of the
11 SWC, MWD, representatives of MWD and the Department of Water Resources. (See
12 Exhibits B and C, attached hereto.) SWC will and hereby does object to the requests for
13 production of documents to the extent it seeks documents in the possession of SWC,
14 MWD, any "representative" of SWC or MWD, or the Department of Water Resources not in
15 the possession or control of the deponent.

16 In BBID's notice, the documents requested beyond the scope of Dr. Hutton's rebuttal
17 testimony include documents in the possession of either SWC or non-party MWD relating
18 to (1) the Water Board's determination of water availability in the Sacramento and San
19 Joaquin River watersheds and the Delta for 2015; (2) the June 5, 2015 CH2M Hill technical
20 memorandum discussed in Dr. Hutton's testimony and **already submitted** as Exhibit
21 SWC0005; (3) CH2M Hill's work for SWC on the technical memorandum dated June 5,
22 2015; and (4) CH2M Hill's separate work for BBID itself. (See Morris Decl., Exhibit 2.)
23 BBID also requests documents in the possession and control of the **Department of Water**
24 **Resources** relating to current or historical diversions of water by Byron-Bethany Irrigation
25 District. (Id.)

26 For CDWA and SDWA, the documents requested beyond the scope of Dr. Hutton's
27 rebuttal include all documents related to (1) communications between Dr. Hutton and any
28 Water Board or Water Board staff member in 2014 or 2015 related to water availability; (2)

1 communications between any representative of non-party MWD and any Water Board or
2 Water Board staff member in 2014 or 2015 related to water availability; and (3)
3 communications between any representative of the SWC and any Water Board or Water
4 Board staff member in 2014 or 2015 related to water availability. (See Morris Decl., Exhibit
5 1.) CDWA's and SDWA's Notice of Deposition provides no definition of what constitutes a
6 "representative" of either SWC or MWD, making the document requests vague and
7 ambiguous as well as unduly burdensome. (Id.) Production of responsive documents to
8 the document requests will require significant hours of staff time, at considerable expense,
9 to search for and review responsive documents in the possession, custody or control of Dr.
10 Hutton. (Morris Decl. ¶ 4.)

11 In these proceedings, the noticing parties have been afforded the opportunity to
12 review written rebuttal testimony and exhibits in advance of the hearing, as well as the
13 opportunity to cross-examine rebuttal witnesses at the evidentiary hearing. SWC should
14 not be forced to bear the burden and considerable expense of producing its rebuttal
15 witness for a continuing deposition, two weeks prior to the evidentiary hearings, or the
16 burden and expense of producing extensive documents, after the deadline for submission
17 of evidence in these consolidated proceedings has passed. The undue burden and
18 expense to SWC far outweighs any benefit to noticing parties merely to prepare for the
19 limited cross-examination of Dr. Hutton on the topic of his rebuttal testimony.

20 Here, the noticing parties seek to exploit the discovery process to not only prepare
21 for the limited cross-examination of Dr. Hutton regarding his rebuttal testimony but also to
22 engage in a fishing expedition for information and documents beyond the scope of Dr.
23 Hutton's rebuttal testimony, all at the undue burden and expense of the SWC. For these
24 reasons, good cause exists for the issuance of a protective order prohibiting the deposition
25 and production of documents by rebuttal witness Dr. Paul Hutton.

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1 **D. Documents Sought by the Noticing Parties Are Irrelevant to the**
2 **Proceeding and Not Calculated to Lead to Admissible Evidence.**

3 Finally, both notices of deposition seek documents that are not relevant to the
4 proceeding or calculated to lead to relevant evidence. (Code of Civil Proc. § 2017.010;
5 Government Code § 11513(c).) The notices seek production of documents outside the
6 time periods at issue in either consolidated proceedings, June 2015 for BBID and post-May
7 1, 2015 for WSID. These documents include all communications between Dr. Hutton, any
8 representative of SWC or any representative of MWD and any Water Board member or
9 Water Board staff related to water availability determinations in **2014**, or at unspecified
10 times in 2015, as well as documents in the possession of the Department of Water
11 Resources related to historical diversions by BBID. (See Exhibits B and C attached
12 hereto.) Further, CDWA's and SDWA's request for all communications with Water Board
13 members or staff relating to water availability determinations do not limit such
14 determinations to the watersheds or water availability determinations at issue in this
15 proceeding. (Morris Decl., Exhibit 1.) As such, these particular documents requests are
16 vague and ambiguous, overbroad and seek documents not relevant to the enforcement
17 proceedings and not calculated to lead to admissible evidence.

18 **IV. CONCLUSION**

19 For the reasons stated above, good cause exists for the issuance of a protective
20 order prohibiting the deposition of Paul Hutton, and the accompanying request for
21 production of documents. In the alternative, if the Hearing Officers are disinclined to
22 prohibit the deposition, SWC respectfully requests the issuance of a protective order either:
23 (1) limiting the scope of the deposition solely to Dr. Hutton's rebuttal testimony and
24 prohibiting the production of documents; or (2) allowing both the deposition of Dr. Hutton
25 and production of documents but limiting the scope of both the deposition and document
26 production to Dr. Hutton's rebuttal testimony and prohibiting the production documents not
27 calculated to lead to the discovery of admissible evidence. If a deposition is permitted to go
28 forward, SWC also requests a protective order limiting the use of any such deposition

1 transcript solely to these enforcement proceedings.

2 Dated: February 26, 2016

DUANE MORRIS LLP

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4 By: Jolie-Anne Ansley

Thomas M. Berliner
Jolie-Anne S. Ansley

5 Attorneys for State Water Contractors

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18 Attorneys for State Water Contractors

19 **BEFORE THE**
20 **CALIFORNIA STATE WATER RESOURCES CONTROL BOARD**

21 ENFORCEMENT ACTION ENF01949 -
22 DRAFT CEASE AND DESIST ORDER
23 REGARDING UNAUTHORIZED OR
24 THREATENED UNAUTHORIZED
25 DIVERSIONS OF WATER FROM OLD RIVER
26 IN SAN JOAQUIN

27 DECLARATION OF STEFANIE D.
28 MORRIS IN SUPPORT OF STATE
WATER CONTRACTORS' MOTION
FOR PROTECTIVE ORDER

29 In the Matter of ENFORCEMENT ACTION
30 ENF01951 -ADMINISTRATIVE CIVIL
31 LIABILITY COMPLAINT REGARDING
32 UNAUTHORIZED DIVERSION OF WATER
33 FROM THE INTAKE CHANNEL TO THE
34 BANKS PUMPING PLANT (FORMERLY
35 ITALIAN SLOUGH) IN CONTRA COSTA
36 COUNTY

37 I, Stefanie D. Morris, do hereby declare:

38 1. I am an attorney at law licensed to practice before the courts of the State of
California. I am general counsel for State Water Contractors, a party to the above-
referenced proceedings. The following matters are within my personal knowledge and, if

1 called upon as a witness, I can competently testify thereto.

2 2. Attached hereto as Exhibit 1 is a true and correct copy of the Notice of Taking
3 Deposition of Paul Hutton, dated February 23, 2016, served by attorneys for Central Delta
4 Water Agency and South Delta Water Agency on State Water Contractors.

5 3. Attached hereto as Exhibit 2 is a true and correct copy of the Notice of
6 Deposition of Paul Hutton and Request for Production of Documents, dated February 24,
7 2016, served by attorneys for Byron-Bethany Irrigation District on State Water Contractors.

8 4. Production of documents responsive to the document requests will require
9 significant hours of staff time, at considerable expense, to coordinate, search for and
10 review responsive documents in the possession of Dr. Paul Hutton, an employee of
11 Metropolitan Water District of Southern California. This estimate pertains solely to efforts to
12 produce responsive documents in Dr. Hutton's possession or control, and not to parties'
13 broader, unduly burdensome requests for documents in the possession or control of
14 entities other than the deponent to which State Water Contractors object.

15 5. On February 24, 2016, Robin McGinnis, attorney for the Department of Water
16 Resources, sent an email on behalf of both State Water Contractors and the Department of
17 Water Resources to attorneys for Byron-Bethany Irrigation District, Central Delta Water
18 Agency and South Delta Water Agency to initiate the meet and confer process regarding
19 the notices served by these parties for the depositions of Paul Hutton and Paul Marshall. A
20 true and correct copy of the email is attached hereto as Exhibit 3. The email proposed a
21 number of stipulated solutions to the issues raised by the deposition notices. On Thursday,
22 February 25, 2016, I also participated in a meet-and-confer conference call with attorneys
23 for Byron-Bethany Irrigation District, Central Delta Water Agency and South Delta Water
24 Agency regarding the deposition notices. No resolution was reached between the parties.

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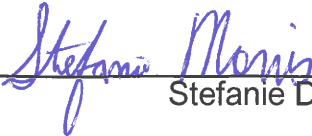
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1 I declare under penalty of perjury under the laws of the State of California that the
2 foregoing is true and correct.

3 Executed on 26 day of February, 2016 in Sacramento, California.

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5 _____
6 Stefanie D. Morris

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EXHIBIT 1

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15 Attorney for South Delta Water Agency

16 **STATE WATER RESOURCES CONTROL BOARD**

17 IN RE THE MATTERS OF

18 WEST SIDE IRRIGATION DISTRICT
19 CEASE AND DESIST ORDER
20 HEARING

21 AND

22 BYRON BETHONY IRRIGATION
23 DISTRICT ADMINISTRATIVE CIVIL
24 LIABILITY HEARING

**NOTICE OF TAKING DEPOSITION
OF PAUL HUTTON; DESIGNATED
REBUTALL EXPERT WITNESS OF
STATE WATER CONTRACTORS**

Date: March 7, 2016

Time: 9:30 a.m.

Location: 500 Capitol Mall, Suite 1000,
Sacramento, CA 95814

25 TO PAUL HUTTON, AND HIS ATTORNEY OF RECORD:

26 PLEASE TAKE NOTICE pursuant to California Water Code section 1100 and California
27 Code of Civil Procedure Section 2025.220 that Parties Central Delta Water Agency (“CDWA”)
28 and South Delta Water Agency (“SDWA”) will conduct the deposition of Paul Hutton
29 (“Deponent”) on March 7, 2016, at 9:30 a.m. at 500 Capitol Mall, Suite 1000, Sacramento, CA
30 95814, before a certified shorthand reporter and/or notary public duly authorized by laws of the
31 State of California to administer oaths.

1 If, for any reason, the taking of said deposition is not completed on March 7, 2016, the
2 deposition will be continued, at the option of the noticing party, from day-to-day thereafter at the
3 same place, excluding weekends and legal holidays, until completed. Notice is further given that
4 under Code of Civil Procedure Section 2025.330 the deposition testimony may be recorded by
5 video technology.

6 CDWA and SDWA request that Deponent bring and have for production, inspection, and
7 copying at the time and place of the deposition, or prior thereto, the following documents, or
8 copies of said documents, if the originals are not in his possession, custody, or control.
9 Electronic form documents are preferred and can be produced on a removable drive.

10 The term "DOCUMENTS," as used herein, is as defined by California Evidence Code
11 section 250, and includes any writing, book, document, or other thing and includes the originals
12 and non-identical copies (e.g., because handwritten or "blind" notes may appear thereon) of all of
13 the following: (a) all writings of any kind, including, but not limited to, letters, telegrams,
14 memoranda, reports, studies, calendar and diary entries, notes, recordings, records of meetings
15 and conversations, tabulations, analyses, statistical or other accumulations of information, raw
16 and refined data, drawings graphs, surveys, charts, view graphs and other illustrations of any
17 kind, including all drafts of any such writing; (b) photographs, films, slides, and other
18 photographic material of any kind, including sound recordings; (c) bills, contracts, invoices,
19 brochures, advertisements, certificates, checks, transcripts, and other mechanical, magnetic, and
20 electronic records of any kind, including sound recordings; (d) all documents stored in or
21 retrievable by computer; (e) any other data compilations not covered by (a) through (d) herein.

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

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The DOCUMENTS requested do not include any documents previously produced.

DOCUMENTS TO BE PRODUCED

1. All DOCUMENTS, including but not limited to source code, data and parameter inputs, related to the modeling described in paragraphs 13-15 and 17 your testimony dated February 22, 2016 (“Testimony”).
2. All DOCUMENTS that relate to or form the basis of the conclusion in paragraph 19 of your Testimony that “Unauthorized diversions of SWP stored water released for the purpose of satisfying WQCP and other regulatory obligations and/or for diversion by the SWP impact the SWC member agencies as the contractual beneficiaries of the SWP. These unauthorized diversions cause the SWP to make additional stored water releases or to reduce exports to satisfy WCQP and other regulatory requirements, thereby decreasing the stored water supplies of the SWP available to SWC member agencies.”
3. All DOCUMENTS related to the conclusion in paragraph 23 of your Testimony that “The 1931 baseline assumption in Susan Paulson’s modeling (BCID384) is inappropriate.”
4. All DOCUMENTS related to the conclusion in paragraph 23 of your Testimony that “upstream development was lower in 1931 than in 2015.”
5. All DOCUMENTS related to the conclusion in paragraph 33 of your Testimony that: “Absent the SWP and CVP, salinity in the south Delta would typically exceed 1.0 mS/cm specific conductance during the irrigation season of dry and critically dry years, which is higher than the current irrigation season WQCP agricultural salinity standard of 0.7 mS/cm.”
6. All DOCUMENTS related to the conclusion in paragraph 33 of your Testimony that: “This suggests that water quality would be too poor to support agricultural use during summer and fall of dry and critically dry years if the SWP and CVP did not exist.”

- 1 7. All DOCUMENTS related to communications between YOU and any Board or staff member
2 of the State Water Resources Control Board in 2014 or 2015 related to water availability
3 determinations.
4
5 8. All DOCUMENTS related to communications between any representative of Metropolitan
6 Water District and any Board or staff member of the State Water Resources Control Board in
7 2014 or 2015 related to water availability determinations.
8
9 9. All DOCUMENTS related to communications between any representative of the State Water
10 Contractors and any Board or staff member of the State Water Resources Control Board in
11 2014 or 2015 related to water availability determinations.

12 All of the above requests should be construed to request only those DOCUMENTS that have not
13 previously been produced. In addition, if the requested documents can be produced in advance of
14 your deposition it will greatly aid in making your deposition more expeditious.

15
16 Dated: February 23, 2016

SPALETTA LAW PC

17
18 By: 
19 JENNIFER SPALETTA
Attorney for Central Delta Water Agency

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EXHIBIT 2

1 SOMACH SIMMONS & DUNN
A Professional Corporation
2 DANIEL KELLY, ESQ. (SBN 215051)
MICHAEL E. VERGARA, ESQ. (SBN 137689)
3 THERESA C. BARFIELD (SBN 185568)
500 Capitol Mall, Suite 1000
4 Sacramento, California 95814-2403
Telephone: (916) 446-7979
5 Facsimile: (916) 446-8199

6 Attorneys for Petitioner/Plaintiff BYRON-
BETHANY IRRIGATION DISTRICT
7

8 BEFORE THE
9 CALIFORNIA STATE WATER RESOURCES CONTROL BOARD
10

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

15 In the Matter of ENFORCEMENT ACTION
ENF01951 – ADMINISTRATIVE CIVIL
16 LIABILITY COMPLAINT REGARDING
UNAUTHORIZED DIVERSION OF WATER
17 FROM THE INTAKE CHANNEL TO THE
BANKS PUMPING PLANT (FORMERLY
18 ITALIAN SLOUGH) IN CONTRA COSTA
COUNTY

SWRCB Enforcement Action
ENF01951 and ENF01949

NOTICE OF DEPOSITION OF PAUL
HUTTON AND REQUEST FOR
PRODUCTION OF DOCUMENTS
(Wat. Code, § 1100)

19
20 TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

21 PLEASE TAKE NOTICE THAT, under to Water Code section 1100 and Code of
22 Civil Procedure section 2025.210 et seq., YOU ARE HEREBY NOTIFIED that attorneys
23 for Byron Bethany Irrigation District (BBID) will take the deposition of **Paul Hutton on**
24 **March 7, 2016 at 9:30 a.m.** Said deposition will take place at the offices of **Somach**
25 **Simmons & Dunn, 500 Capitol Mall, Suite 1000, Sacramento, California 95814.**

26 The deposition of Paul Hutton is in regards to the following:

27 1. Any and all facts, opinions, and/or documents referring or relating to the
28 Deponent's testimony filed in the subject proceedings.

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YOU ARE FURTHER NOTIFIED THAT:

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

Dated: February 24, 2016

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 Contractors (SWC) and/or Metropolitan Water District of Southern California (MWD) 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 SWC and/or MWD, concerning or relating to the Deponent's testimony filed in the subject proceedings.
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(s) (current and/or historical) of water by Byron-Bethany Irrigation District (BBID).
4. All WRITINGS, as that term is defined in California Evidence Code section 250, in the possession or control of the SWC and/or MWD, relied upon by the Deponent in preparing any and all testimony filed in the subject proceedings.
5. All WRITINGS, as that term is defined in California Evidence Code section 250, in the possession or control of the SWC and/or MWD, concerning or relating to the June 5, 2015 Draft Technical Memorandum from CH2M Hill to Terry Erlewine, attached to your testimony.
6. All WRITINGS, as that term is defined in California Evidence Code section 250, in the possession or control of the SWC and/or MWD, concerning or relating to CH2M Hill's work on the June 5, 2015 Draft Technical Memorandum.
7. All WRITINGS, as that term is defined in California Evidence Code section 250, in the possession or control of the SWC and/or MWD, between May 1, 2015 and the date of your deposition, concerning or relating to CH2M Hill's work for BBID in any capacity.

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.

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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 February 24, 2016, I served the following document(s):

**NOTICE OF DEPOSITION OF PAUL HUTTON
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 February 24, 2016 at Sacramento, California.


Yolanda De La Cruz

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

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<p><u>VIA ELECTRONIC MAIL</u></p> <p>Division of Water Rights Prosecution Team Andrew Tauriainen, Attorney III SWRCB Office of Enforcement 1001 I Street, 16th Floor Sacramento, CA 95814 andrew.tauriainen@waterboards.ca.gov</p>	<p><u>VIA ELECTRONIC MAIL</u></p> <p>Byron-Bethany Irrigation District Daniel Kelly Somach Simmons & Dunn 500 Capitol Mall, Suite 1000 Sacramento, CA 95814 dkelly@somachlaw.com</p>
<p><u>VIA ELECTRONIC MAIL</u></p> <p>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</p>	<p><u>VIA ELECTRONIC MAIL</u></p> <p>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</p>
<p><u>VIA ELECTRONIC MAIL</u></p> <p>Central Delta Water Agency Jennifer Spaletta Law PC P.O. Box 2660 Lodi, CA 95241 jennifer@spalettalaw.com</p> <p>Dante John Nomellini Daniel A. McDaniel Dante John Nomellini, Jr. NOMELLINI, GRILLI & MCDANIEL 235 East Weber Avenue Stockton, CA 95202 ngmpics@pacbell.net dantejr@pacbell.net</p>	<p><u>VIA ELECTRONIC MAIL</u></p> <p>California Department of Water Resources Robin McGinnis, Attorney P.O. Box 942836 Sacramento, CA 94236-0001 robin.mcginnis@water.ca.gov</p>
<p><u>VIA ELECTRONIC MAIL</u></p> <p>Richard Morat 2821 Berkshire Way Sacramento, CA 95864 rmorat@gmail.com</p>	<p><u>VIA ELECTRONIC MAIL</u></p> <p>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</p>

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<u>VIA ELECTRONIC MAIL</u>	<u>VIA ELECTRONIC MAIL</u>
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

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**SERVICE LIST
WEST SIDE IRRIGATION DISTRICT
CEASE AND DESIST ORDER HEARING**

<p>Division of Water Rights Prosecution Team Andrew Tauriainen, Attorney III SWRCB Office of Enforcement 1001 I Street, 16th Floor Sacramento, CA 95814 andrew.tauriainen@waterboards.ca.gov</p>	<p>The West Side Irrigation District Jeanne M. Zolezzi Karna Harringfeld Janelle Krattiger Herum\Crabtree\Suntag 5757 Pacific Avenue, Suite 222 Stockton, CA 95207 jzolezzi@herumcrabtree.com kharringfeld@herumcrabtree.com jkrattiger@herumcrabtree.com</p>
<p>State Water Contractors Stefani Morris 1121 L Street, Suite 1050 Sacramento, CA 95814 smorris@swc.org</p>	<p>Westlands Water District Daniel O'Hanlon Rebecca Akroyd Kronick Moskowitz Tiedemann & Girad 400 Capitol Mall, 27th Floor Sacramento, CA 95814 dohanlon@kmtg.com rakroyd@kmtg.com</p> <p>Phillip Williams of Westlands Water District pwilliams@westlandswater.org</p>
<p>South Delta Water Agency John Herrick Law Offices of John Herrick 4255 Pacific Avenue, Suite 2 Stockton, CA 95207 Email: Jherrlaw@aol.com</p>	<p>Central Delta Water Agency Jennifer Spaletta Law PC P.O. Box 2660 Lodi, CA 95241 jennifer@spalettalaw.com</p> <p>Dante Nomellini and Dante Nomellini, Jr. NOMELLINI, GRILLI & MCDANIEL ngrnpics@pacbell.net dantejr@pacbell.net</p>
<p>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</p>	<p>San Joaquin Tributaries Authority Valerie C. Kincaid O'Laughlin & Paris LLP 2617 K Street, Suite 100 Sacramento, CA 95816 vkinaid@olaughlinparis.com</p>
<p>Byron-Bethany Irrigaton District Daniel Kelly Somach Simmons & Dunn 500 Capitol Mall, Suite 1000 Sacramento, CA 95814 dkelly@somachlaw.com</p>	<p>California Department of Water Resources Robin McGinnis, Attorney P.O. Box 942836 Sacramento, CA 94236-0001 robin.mcginnis@water.ca.gov</p>

EXHIBIT 3

Stefanie Morris

From: McGinnis, Robin C.@DWR <Robin.McGinnis@water.ca.gov>
Sent: Wednesday, February 24, 2016 5:36 PM
To: Jennifer Spaletta; dkelly@somachlaw.com
Cc: Unit, Wr_Hearing@Waterboards; Kuenzi, Nicole@Waterboards; ernie.mona@waterboards.ca.gov; Farwell Jensen, Jane@Waterboards; Tauriainen, Andrew@Waterboards; jzolezzi@herumcrabtree.com; kharrigfeld@herumcrabtree.com; jkrattiger@herumcrabtree.com; Stefanie Morris; dohanlon@kmtg.com; Akroyd, Rebecca@KMTG; pwilliams@westlandswater.org; Herrick, John @aol.com; S. Dean Ruiz; ngmplcs@pacbell.net; dantejr@pacbell.net; jonathan.knapp@sfgov.org; vkincaid@olaughlinparis.com; red@eslawfirm.com; rjmorat@gmail.com; lwood@olaughlinparis.com
Subject: BBID/WSID Hearings: meet and confer regarding depositions of Paul Hutton and Paul Marshall

Mr. Kelly and Ms. Spaletta:

This e-mail is DWR's and SWC's meet and confer on the proposed depositions of Paul Hutton and Paul Marshall. In order to avoid filing motions for protective orders, DWR and SWC would like the parties to enter a stipulation and seek an order from the Hearing Officers regarding the proposed depositions. The hearing dates are fast approaching and the purpose of the proposed depositions should be to collect information for the noticing parties to prepare cross examination of these rebuttal witnesses and determine whether to submit any additional rebuttal.

Therefore, DWR and SWC would like all of the parties to stipulate that:

1. The scope of the depositions will be limited to the matters in the witnesses' written rebuttal testimony and exhibits relied on;
2. Transcripts from the depositions cannot be used in any future proceedings; and
3. The parties will submit the stipulation to the Hearing Officers with a request that they issue an order based on it.

Please let me know if we can get started working on a stipulation. Also, Paul Marshall is not available March 3-11 and SWC are not available on March 7, but are available March 8, 9, and 10. Thank you.

Robin

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

CONFIDENTIALITY: This e-mail message and any attachments are for the sole use of the intended recipient(s) and may contain confidential and privileged information. Any unauthorized review, use, disclosure, or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply e-mail and destroy all copies of the original message. Thank you.

1 **PROOF OF SERVICE**

2 I am a resident of the state of California, I am over the age of 18 years, and I am not a party
3 to this lawsuit. My business address is 1121 L Street, Suite 1050, Sacramento, California, 95814.

4 On February 26, 2016, I served on the State Water Resources Control Board and all parties
5 attached and below, an electronic copy, of the following document(s):

- 6 **(1) STATE WATER CONTRACTORS' MOTION FOR PROTECTIVE ORDER;**
7 **(2) MORRIS DECLARATION**

8 on the interested party(ies) in this action in the following manner:

9 **BY E-MAIL:** On February 26, 2016, at Sacramento, California, I caused the foregoing document(s)
10 to be served by e-mail transmission to the e-mail address(es) set forth below, as last given by that
11 person on any document which he or she has filed in the cause and served on the party making the
12 service. The document(s) was(were) transmitted by e-mail from a computer in the offices of the
13 State Water Contractors. The e-mail transmission(s) was(were) reported as delivered to the
14 party(ies) at the indicated e-mail address(es), and no undeliverable message from the recipient's
15 server was received by the sender of the e-mail.

16 **SEE ATTACHED SERVICE LIST**

17 I declare under penalty of perjury under the laws of the State of California that the foregoing is true
18 and correct. Executed on February 26, 2016, at Sacramento, California.

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20 Linda Standlee
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**SERVICE LIST OF PARTICIPANTS
THE WEST SIDE IRRIGATION DISTRICT
CEASE AND DESIST ORDER HEARING**

PARTIES

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

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 2 Daniel Kelly
 3 Somach Simmons & Dunn
 4 500 Capitol Mall, Suite 1000
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 dkelly@somachlaw.com

6 **SERVICE LIST OF PARTICIPANTS**
 7 **BYRON-BETHANY IRRIGATION DISTRICT**
 8 **ADMINISTRATIVE CIVIL LIABILITY HEARING**

9 **PARTIES**

10 **Division of Water Rights**
 11 Prosecution Team
 12 Andrew Tauriainen, Attorney III
 13 SWRCB Office of Enforcement
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 16th Floor
 Sacramento, CA 95814
 andrew.tauriainen@waterboards.ca.gov

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14 **Patterson Irrigation District**
 15 **Banta-Carbona Irrigation District**
 16 **The West Side Irrigation District**
 17 Jeanne M. Zolezzi
 18 Herum\Crabtree\Suntag
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 26 Dante Nomellini and Dante Nomellini, Jr.
 27 Nomellini, Grilli & McDaniel
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<p>Richard Morat 2821 Berkshire Way Sacramento, CA 95864 rjmorat@gmail.com</p>	<p>San Joaquin Tributaries Authority Valerie Kincaid O'Laughlin & Paris LLP 2617 K Street, Suite 100 Sacramento, CA 95814 vkincaid@olaughlinparis.com towater@olaughlinparis.com lwood@olaughlinparis.com</p>
<p>South Delta Water Agency John Herrick, Esq. 4255 Pacific Ave., Suite 2 Stockton, CA 95207 jherrlaw@aol.com</p> <p>Dean Ruiz, Esq. Harris, Perisho & Ruiz, Attorneys at Law 3439 Brookside Road, Suite 210 Stockton, CA 95219 dean@hprlaw.net</p>	