

## Farwell Jensen, Jane@Waterboards

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**From:** Tauriainen, Andrew@Waterboards  
**Sent:** Wednesday, February 03, 2016 3:57 PM  
**To:** Mona, Ernie@Waterboards; dkelly@somachlaw.com; jzolezzi@herumcrabtree.com; jonathan.knapp@sfgov.org; red@eslawfirm.com; jennifer@spalettalaw.com; ngmplcs@pacbell.net; dantejr@pacbell.net; McGinnis, Robin C.@DWR; rjmorat@gmail.com; vkincaid@olaughlinparis.com; lwood@olaughlinparis.com; Herrick, John @aol.com; dean@hprlaw.net; smorris@swc.org; towater@olaughlinparis.com; kharrigfeld@herumcrabtree.com; jkrattiger@herumcrabtree.com; dohanlon@kmtg.com; Akroyd, Rebecca@KMTG; pwilliams@westlandswater.org  
**Cc:** Riddle, Diane@Waterboards; Kuenzi, Nicole@Waterboards; Buckman, Michael@Waterboards; Farwell Jensen, Jane@Waterboards; McCue, Jean@Waterboards; Kauba, Amy@Waterboards; Bourgeois, Deborah@Waterboards  
**Subject:** RE: Byron-Bethany Irrigation District and The West Side Irrigation District Hearing: Procedural Ruling  
**Attachments:** Written Testimony of Jack Alvarez.pdf; REVISED Notice of Intent.pdf; wsid0099 karna\_harrigfeld written testimony.pdf  
**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

WSID this morning submitted the attached Revised Notice of Intent to Appear listing Jack Alvarez as a witness. Mr. Alvarez has not been listed on any of WSID's witness lists before today. Aside from the first two introductory paragraphs, and a page number reference in the sixth paragraph, Mr. Alvarez's written testimony is identical to Ms. Harrigfeld's. Mr. Alvarez purports to be a member of the WSID Board of Directors and, like Ms. Harrigfeld, describes himself as "very familiar with [WSID's] jurisdictional area, facilities, water right and operations." As with Ms. Harrigfeld, the Prosecution Team would have sought discovery of Mr. Alvarez's records and possibly his deposition had he previously been identified as a witness. The Prosecution Team's objections to Ms. Harrigfeld's testimony apply to Mr. Alvarez's testimony, amplified by the fact that today's submittal cuts off the Prosecution Team from over two weeks more potential discovery time.

More importantly, WSID ignores the Hearing Officers' February 1 ruling striking Ms. Harrigfeld's testimony, and that "WSID may, however, identify an alternate witness as necessary to authenticate the exhibits referenced in Ms. Harrigfeld's testimony." In light of this ruling, the Prosecution Team requests that the Hearing Officers strike Mr. Alvarez's testimony from the record in its entirety.

In order to prevent the need for similar future objections, the Prosecution Team is willing to stipulate to the authenticity of the exhibits referenced in Mr. Alvarez's testimony, WSID0001 through WSID0026. The Prosecution Team made a similar offer to WSID's counsel while the Prosecution Team's previous objections were pending, but received no substantive reply. As part of this offer, the Prosecution Team requests that the Hearing Officers prohibit WSID from identifying any alternate case-in-chief witnesses for any purpose. This includes re-adding David Kaiser, as the Prosecution Team and WSID have previously agreed that Mr. Martinez may replace Mr. Kaiser on WSID's witness list. Likewise, the Prosecution Team does not agree to stipulate to any of the facts alleged in any of the relevant exhibits.

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**From:** Mona, Ernie@Waterboards

**Sent:** Monday, February 01, 2016 9:53 AM

**To:** Tauriainen, Andrew@Waterboards; [dkelly@somachlaw.com](mailto:dkelly@somachlaw.com); [jzolezzi@herumcrabtree.com](mailto:jzolezzi@herumcrabtree.com); [jonathan.knapp@sfgov.org](mailto:jonathan.knapp@sfgov.org); [red@eslawfirm.com](mailto:red@eslawfirm.com); [jennifer@spalettalaw.com](mailto:jennifer@spalettalaw.com); [ngmplcs@pacbell.net](mailto:ngmplcs@pacbell.net); [dantejr@pacbell.net](mailto:dantejr@pacbell.net); McGinnis, Robin C.@DWR; [rjmorat@gmail.com](mailto:rjmorat@gmail.com); [ykincaid@olaughlinparis.com](mailto:ykincaid@olaughlinparis.com); [lwood@olaughlinparis.com](mailto:lwood@olaughlinparis.com); Herrick, John@aol.com; [dean@hprrlaw.net](mailto:dean@hprrlaw.net); [smorris@swc.org](mailto:smorris@swc.org); [towater@olaughlinparis.com](mailto:towater@olaughlinparis.com); [kharrigfeld@herumcrabtree.com](mailto:kharrigfeld@herumcrabtree.com); [jkrattiger@herumcrabtree.com](mailto:jkrattiger@herumcrabtree.com); [dohanlon@kmtg.com](mailto:dohanlon@kmtg.com); Akroyd, Rebecca@KMTG; [pwilliams@westlandswater.org](mailto:pwilliams@westlandswater.org)

**Cc:** Riddle, Diane@Waterboards; Kuenzi, Nicole@Waterboards; Buckman, Michael@Waterboards; Farwell Jensen, Jane@Waterboards; McCue, Jean@Waterboards; Kauba, Amy@Waterboards; Bourgeois, Deborah@Waterboards

**Subject:** RE: Byron-Bethany Irrigation District and The West Side Irrigation District Hearing: Procedural Ruling

#### To Parties

Ladies and Gentlemen:

Attached is a procedural ruling addressing matters raised by the Division of Water Rights Prosecution Team (Prosecution Team) regarding electronic service by way of online storage; The West Side Irrigation District's (WSID) amended Notice of Intent to Appear; the motions filed by Byron-Bethany Irrigation District (BBID) and WSID on January 25, 2016; and other related matter.

#### Ernest Mona

[State Water Resources Control Board](#)

[Division of Water Rights](#)

[Hearings and Special Programs Section](#)

(916) 341-5359



Draft Cease and Desist Order  
 Against  
 The West Side Irrigation District

<b>NAME</b>	<b>SUBJECT OF PROPOSED TESTIMONY</b>	<b>ESTIMATED LENGTH OF DIRECT TESTIMONY</b>	<b>EXPERT WITNESS (YES/NO)</b>
Rick Martinez	WSID Water Use	10 min	NO
Jack Alvarez	WSID Water Use	10 min	NO
Susan Paulsen, Ph.D., P.E.	Water Availability and Delta Hydrodynamics	30 min	YES
Tom Burke, P.E.	Water Availability and Delta Hydrodynamics	20 min	YES
Nick Bonsignore, P.E.	Water Availability Analysis	20 min	YES
Greg Young, P.E.	Water Availability Analysis	20 min	YES
Kathy Mrowka	Water Availability	10 min	NO
Brian Coats	Water Availability	10 min	NO
Jeff Yeazel	Water Availability	10 min	NO
John O'Hagan	Water Availability	10 min	NO
Stephen NemethDWR	Full Natural Flow	15 min	NO
Michael George	Water Availability	10 min	NO
Tom Howard	Water Availability	10 min	NO

1 JEANNE M. ZOLEZZI, State Bar No. 121282  
2 KARNA E. HARRIGFELD, State Bar No. 162824  
3 JANELLE KRATTIGER, State Bar No. 299076  
4 **HERUM\CRABTREE\SUNTAG**  
5 5757 Pacific Avenue, Suite 222  
6 Stockton, CA 95207  
7 Telephone: (209) 472-7700

8 Attorneys for  
9 The West Side Irrigation District

10 BEFORE THE STATE WATER RESOURCES CONTROL BOARD

11 ENFORCEMENT ACTION ENFO1949  
12 DRAFT CEASE AND DESIST ORDER  
13 REGARDING UNAUTHORIZED  
14 DIVERSIONS RO THREATENED  
15 UNAUTHORIZED DIVERSIONS OF  
16 WATER FROM OLD RIVER IN SAN  
17 JOAQUIN COUNTY

18 ) WRITTEN TESTIMONY  
19 ) OF JACK ALVAREZ

20 ) Hearing Date: March 21, 2016  
21 ) Hearing Officer: Frances Spivy-Weber

22 **INTRODUCTION**

23 1. My name is Jack Alvarez, and I submit this written testimony on behalf of The  
24 West Side Irrigation District (“**WSID**” or “**District**”).

25 2. I am a member of the Board of Directors of WSID, and have served on the Board  
26 since 1994 and am very familiar with its jurisdictional area, facilities, water right and operations.  
27 I am currently the President of the Board of Directors, and have held that position since February  
28 1997.

1 3. WSID is a California irrigation district, located in San Joaquin County, and  
2 includes 6,345.86 acres of agricultural land within its boundaries.

3 4. The District holds water right License 1381, originally issued on September 29,  
4 1933 and amended on August 19, 2010 (“**License**”). A true and correct copy of the License is  
5 provided as **EXHIBIT WSID0005**.

6 5. License 1381 has a priority date of April 17, 1916, and authorizes the direct  
7 diversion of 82.5 cubic feet per second (“**cfs**”) from Old River in San Joaquin County from (1)  
8 about April 1 to October 31 of each year for irrigation and (2) from April 1 to October 31 of each  
9 year for municipal, domestic and industrial uses.

**WSID CDO/BBID**

**ACL WSID0158**

1           6.       In 1929 the Department of Public Works issued Bulletin No. 21, which discussed  
2 WSID diversions and confirmed that the water diverted by WSID pursuant to its License is  
3 “largely return flow from diversions farther upstream and water reaching the San Joaquin Delta  
4 from Sacramento River through Georgiana Slough and other inter-delta channels.” I obtained a  
5 copy of the report from the Department of Water Resources (“DWR”), the successor of the  
6 Department of Public Works. DWR posts historic reports on its website at  
7 <http://www.water.ca.gov/waterdatalibrary/docs/historic/bulletins.cfm>. A true and correct copy  
8 of Department of Public Works Bulletin No. 21 dated 1929 is provided as **EXHIBIT**  
9 **WSID0006**, see pages 156-158.

10           7.       The License was issued in 1933 documenting the maximum amount of water  
11 found to have been put to beneficial use in the years 1930, 1931 and 1932, as acknowledged in  
12 that October 9, 1933 letter to WSID from the State of California Department of Public Works. A  
13 true and correct copy of the October 9, 1933 letter is provided as **EXHIBIT WSID0007**. A true  
14 and correct copy of Table 38 of the Sacramento San Joaquin Water Supervisor’s Report,  
15 Department of Public Works Bulletin No. 23 dated August 1932 is provided as **EXHIBIT**  
16 **WSID0008**. I obtained a copy of the Water Supervisor’s Report from DWR’s website at  
17 <http://www.water.ca.gov/waterdatalibrary/docs/historic/bulletins.cfm>.

18           8.       WSID and its diversion facilities on Old River are located in the Sacramento-San  
19 Joaquin Delta. A true and correct copy of the Sacramento-San Joaquin Delta Atlas prepared by  
20 the California Department of Water Resources is provided as **EXHIBIT WSID0010**. I obtained  
21 a copy of the Delta Atlas from DWR’s website at  
22 <http://baydeltaoffice.water.ca.gov/DeltaAtlas/index.cfm>. See page 4 for a map of the Delta,  
23 showing the location of Old River. See also **EXHIBITS WSID0001, WSID0002, WSID0003**  
24 and **WSID0004** for maps of the WSID boundaries. These maps accurately reflect the District’s  
25 boundaries and diversion facility location.

26           9.       The WSID License file at the State Water Resources Control Board contains a  
27 copy of the State Water Resources Control Board staff’s July 18, 1985 Report of Inspection of  
28 the WSID Facilities on file with the State Water Resources Control Board, a true and correct

1 copy of which is provided here as **EXHIBIT WSID 0009**. In that inspection report, the State  
2 Board explained:

3 a. water moves slowly in the flat gradient channel which is affected by tides  
4 of about 4 feet;

5 b. the channel is from 4 feet to 8 feet deep depending on tides; and

6 c. the quality of Old River water diverted by WSID in the intake channel is  
7 poor, running from 800 to 1000 total dissolved solids.

8 10. There is a drainage canal located in WSID called the Bethany Drain. The location  
9 of the Bethany Drain is accurately depicted on **EXHIBITS WSID0001, WSID0002, WSID0003**  
10 and **WSID0004**.

11 11. The Bethany Drain collects irrigation return water through tile drains from  
12 landowners within WSID, shallow groundwater from tile drains, and municipal drainage from  
13 lands within the City of Tracy and discharges that return water directly into WSID's intake  
14 channel. My understanding of the operation of Bethany Drain is based on personal experience  
15 over the last 20 years negotiating the agreements related to the operations of the Bethany Drain  
16 on behalf of WSID.

17 12. The Bethany Drain is exclusively owned, operated and maintained by WSID, and  
18 WSID maintains exclusive control over the Bethany Drain from its origination within the District  
19 boundaries along its entire course, until it discharges into the WSID intake canal. Title to the  
20 Bethany Drain was obtained by WSID over time, from the 1930's and 1940's. True and correct  
21 copy of three deeds to portions of the Bethany Drain that exemplify the deeds held by WSID for  
22 the Bethany Drain are attached hereto as **EXHIBITS WSID0014, WSID0015** and **WSID0016**.  
23 These deeds are official records of the district and are true and correct copies of public records  
24 recorded in San Joaquin County.

25 13. The history and original purpose of the Bethany Drain is explained in a WSID  
26 business record obtained from Naglee-Burk Irrigation District, maintained by the district since  
27 1924, and produced here as **Exhibit WSID0011**, which contains a true and correct copy of an  
28

1 August 1924 Report on Drainage prepared by Thomas H. Means Engineering for the Naglee-  
2 Burk Irrigation District (“**Drainage Report**”).

3 14. The Drainage Report confirms that drainage is needed within WSID to protect  
4 lands from high water tables, and notes that in 1924 water stood at less than 4 feet from the  
5 surface within WSID. See **EXHIBIT WSID0011** at pages 14 - 19.

6 15. Municipal discharges into the Bethany Drain are allowed pursuant to a contract  
7 between the City of Tracy and WSID, as well as other similar contracts between WSID and other  
8 municipal and industrial properties. A true and correct copy of the 2010 Drainage Agreement  
9 between the City of Tracy and The West Side Irrigation District is provided as **EXHIBIT**  
10 **WSID0012**. The other drainage agreements between WSID and others are similar in form.

11 16. A map of the City’s drainage system, its relationship to WSID drains, and other  
12 drainage information is included in the City of Tracy November 2012 Citywide Storm Drainage  
13 Master Plan, a true and correct copy of which is provided as **EXHIBIT WSID0013**, see pages  
14 1.15, 1.18, 2.1 and 2.3, and Figures 1.4 and 2.3. This Master Plan document was officially  
15 adopted by the City of Tracy City Council, is maintained by the City as an official document and  
16 business record of the City, and was obtained from the City of Tracy website at  
17 [http://www.ci.tracy.ca.us/documents/Final\\_Storm\\_Drainage\\_Master\\_Plan.pdf](http://www.ci.tracy.ca.us/documents/Final_Storm_Drainage_Master_Plan.pdf).

18 17. WSID discharges its drain water from the Bethany Drain into the WSID intake  
19 channel with the express intention of recapturing the water at its diversion pumps. This practice  
20 has continued for many years with the full knowledge of the State Water Resources Control  
21 Board.

22 18. By letter dated September 21, 1998, WSID notified State Water Board that it  
23 “obtains a substantial amount of water through recycled tail water from district irrigation, and  
24 from neighboring districts.” A true and correct copy of a September 21, 1998 letter from WSID  
25 to the State Water Resources Control Board is provided as **EXHIBIT WSID0017**. This letter is  
26 maintained as a business record of WSID.

27 19. By letter dated September 25, 1998, WSID again notified the State Water Board  
28 that “it is our position that this [Bethany Drain] water is not subject to appropriation because it

1 does not reach a natural watercourse. The water is pumped from a man-made canal.  
2 Consequently, WSID has the right to use this water without a permit from the State Water  
3 Resources Control Board. As such, WSID does not need to divert such water under the terms of  
4 its License, it does not need to file a new appropriation, and it does not need to provide the Board  
5 with copies of agreements entitling it to use this water.” A true and correct copy of that  
6 September 25, 1998 letter is provided as **EXHIBIT WSID0018**. This letter is maintained as a  
7 business record of WSID.

#### 8 **CITY OF TRACY WASTEWATER**

9 20. The City of Tracy operates a wastewater treatment plant and discharges treated  
10 wastewater effluent to Old River, a water of the United States, pursuant to Order R5-2012-0115  
11 (NPDES Permit CA0079154) issued by the Central Valley Regional Water Quality Control  
12 Board. A true and correct copy of NPDES Permit CA0079154, obtained from the State Water  
13 Board website at [http://www.waterboards.ca.gov/rwqcb5/board\\_decisions/adopted\\_orders/  
14 san\\_joaquin/r5-2012-0115.pdf1](http://www.waterboards.ca.gov/rwqcb5/board_decisions/adopted_orders/san_joaquin/r5-2012-0115.pdf1) is provided as **EXHIBIT WSID0019**.

15 21. The City discharges approximately 9 million gallons per day ("mgd"), which is  
16 equivalent to 14 cfs, on a substantially continuous basis into Old River upstream from the  
17 District's point of diversion under License 1381. A true and correct copy of an excel spreadsheet  
18 submitted by the City of Tracy to the State Water Resources Control Board summarizing  
19 discharges from its wastewater treatment plant, as provided by the State Water Board  
20 Prosecution Team in its November 3, 2015 response to a Public Records Act Request submitted  
21 by WSID is provided as **EXHIBIT WSID0020**.

22 22. The City obtains water supplies from three sources: (1) South San Joaquin  
23 Irrigation District water delivered from the Stanislaus River (typically the majority of the City's  
24 supply); (2) United States Bureau of Reclamation water delivered from the Delta-Mendota  
25 Canal; and (3) local groundwater wells (typically the smallest portion of the City's supply). The  
26 City's treated wastewater discharges are foreign in source and/or foreign in time to the Old River  
27 flow. These sources are explained in the April 2011 City of Tracy Urban Water Management  
28 Plan, a copy of which is provided as **EXHIBIT WSID0021**. This Plan was formally adopted by



1 the City of Tracy and is an official record and business record of the City of Tracy, and was  
2 obtained from the City of Tracy website at [http://www.ci.tracy.ca.us/documents/  
3 Urban\\_Water\\_Management\\_Plan\\_2011.pdf](http://www.ci.tracy.ca.us/documents/Urban_Water_Management_Plan_2011.pdf).


4 23. On May 6, 2014, the City Council adopted Resolution 2014-165, authorizing the  
5 City to enter into a Wastewater Revocable License Agreement with WSID (“2014 Agreement”)  
6 for the sale of treated wastewater from the City’s wastewater treatment plant. The 2014  
7 Agreement provided that WSID may divert all of the City’s wastewater discharges from April 1,  
8 2014 through October 31, 2014, estimated to be approximately 14 cfs, equivalent to 27.8 acre-  
9 feet per day, on a continuous basis. A true and correct copy of Resolution 2014-165 is provided  
10 as **EXHIBIT WSID0022**. A true and correct copy of the 2014 Agreement is provided as  
11 **EXHIBIT WSID0023**.

12 24. On March 3, 2015, the Tracy City Council adopted Resolution 2015-033,  
13 authorizing the City to enter into a Wastewater Revocable License Agreement with WSID  
14 (“2015 Agreement”) for the sale of treated wastewater from the City’s wastewater treatment  
15 plant. The 2015 Agreement provided that WSID may divert all of the City’s wastewater  
16 discharges from April 1, 2015 through October 31, 2015, estimated to be approximately 14 cfs,  
17 equivalent to 27.8 acre-feet per day, on a continuous basis. A true and correct copy of  
18 Resolution 2015-033 is provided as **EXHIBIT WSID0024**. A true and correct copy of the 2015  
19 Agreement is provided as **EXHIBIT WSID0025**.

20 25. WSID did not provide the City with a written Commencement Notice and WSID  
21 did not purchase or divert wastewater from the City under the 2015 Agreement. On July 7, 2015  
22 the City terminated the 2015 Agreement. A true and correct copy of the July 8, 2015 Letter from  
23 the City of Tracy notifying WSID of the termination is provided as **EXHIBIT WSID0026**.

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

26 Executed this \_\_\_\_ day of February, 2016 in Tracy, California.

27  
28   
JACK ALVAREZ

1 JEANNE M. ZOLEZZI, State Bar No. 121282  
2 KARNA E. HARRIGFELD, State Bar No. 162824  
3 JANELLE KRATTIGER, State Bar No. 299076  
4 **HERUM\CRABTREE\SUNTAG**  
5 5757 Pacific Avenue, Suite 222  
6 Stockton, CA 95207  
7 Telephone: (209) 472-7700

8 Attorneys for  
9 The West Side Irrigation District

10 BEFORE THE STATE WATER RESOURCES CONTROL BOARD

11 ENFORCEMENT ACTION ENFO1949 )  
12 DRAFT CEASE AND DESIST ORDER ) WRITTEN TESTIMONY  
13 REGARDING UNAUTHORIZED ) OF KARNA E. HARRIGFELD  
14 DIVERSIONS RO THREATENED )  
15 UNAUTHORIZED DIVERSIONS OF )  
16 WATER FROM OLD RIVER IN SAN )  
17 JOAQUIN COUNTY )  
18 Hearing Date: March 21, 2016  
19 Hearing Officer: Frances Spivy-Weber

20 **INTRODUCTION**

21 1. My name is Karna E. Harrigfeld, and I am an attorney licensed to practice law in  
22 the State of California. I submit this written testimony on behalf of The West Side Irrigation  
23 District (“**WSID**” or “**District**”).

24 2. I am currently the General Counsel for WSID. I have served as General Counsel  
25 for WSID since 1995 and am very familiar with its jurisdictional area, facilities, water right and  
26 operations. I have attended the majority of the WSID board meetings during that time period,  
27 toured the facilities with WSID staff at least ten (10) times and actively worked on all matters  
28 related to the WSID water rights and diversion facilities during that time period of twenty (20)  
years. Part of my role as General Counsel is to maintain important business records of the  
District that relate to property rights and water rights. My testimony refers to several of those  
records.

3. WSID is a California irrigation district, located in San Joaquin County, and  
includes 6,345.86 acres of agricultural land within its boundaries.

///

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**WSID CDO/BBID ACL**  
**WSID0099**

1           4.       The District holds water right License 1381, originally issued on September 29,  
2 1933 and amended on August 19, 2010 (“**License**”). A true and correct copy of the License is  
3 provided as **EXHIBIT WSID0005**.

4           5.       License 1381 has a priority date of April 17, 1916, and authorizes the direct  
5 diversion of 82.5 cubic feet per second (“**cfs**”) from Old River in San Joaquin County from (1)  
6 about April 1 to October 31 of each year for irrigation and (2) from April 1 to October 31 of each  
7 year for municipal, domestic and industrial uses.

8           6.       In 1929 the Department of Public Works confirmed that the water diverted by  
9 WSID pursuant to its License is “largely return flow from diversions farther upstream and water  
10 reaching the San Joaquin delta from Sacramento River through Georgiana Slough and other  
11 inter-delta channels.” I obtained a copy of the report from the Department of Water Resources  
12 (“**DWR**”), the successor of the Department of Public Works. DWR posts historic reports on its  
13 website at <http://www.water.ca.gov/waterdatalibrary/docs/historic/bulletins.cfm>. A true and  
14 correct copy of Department of Public Works Bulletin No. 21 dated 1929 is provided as  
15 **EXHIBIT WSID0006**, see pages 166-168.

16           7.       The License was issued in 1933 documenting the maximum amount of water  
17 found to have been put to beneficial use in the years 1930, 1931 and 1932, as documented in the  
18 Sacramento San Joaquin Water Supervisor’s records, as acknowledged in that October 9, 1933  
19 letter to WSID from the State of California Department of Public Works. A true and correct  
20 copy of the October 9, 1933 letter is provided as **EXHIBIT WSID0007**. A true and correct copy  
21 of Table 38 of the Sacramento San Joaquin Water Supervisor’s Report, Department of Public  
22 Works Bulletin No. 23 dated August 1932 is provided as **EXHIBIT WSID0008**. I obtained a  
23 copy of the Water Supervisor’s Report from DWR’s website at  
24 <http://www.water.ca.gov/waterdatalibrary/docs/historic/bulletins.cfm>.

25           8.       WSID and its diversion facilities on Old River are located in the Sacramento-San  
26 Joaquin Delta. A true and correct copy of the Sacramento-San Joaquin Delta Atlas prepared by  
27 the California Department of Water Resources is provided as **EXHIBIT WSID0010**. I obtained  
28 a copy of the Delta Atlas from DWR’s website at

1 <http://baydeltaoffice.water.ca.gov/DeltaAtlas/index.cfm>. See page 4 for a map of the Delta,  
2 showing the location of Old River. See also **EXHIBITS WSID0001, WSID0002, WSID0003**  
3 and **WSID0004** for maps of the WSID boundaries. These maps accurately reflect the District's  
4 boundaries and diversion facility location.

5 9. The WSID License file at the State Water Resources Control Board contains a  
6 copy of the State Water Resources Control Board staff's July 18, 1985 Report of Inspection of  
7 the WSID Facilities on file with the State Water Resources Control Board, a true and correct  
8 copy of which is provided here as **EXHIBIT WSID 0009**. In that inspection report, the State  
9 Board explained:

- 10 a. water moves slowly in the flat gradient channel which is affected by tides  
11 of about 4 feet;
- 12 b. the channel is from 4 feet to 8 feet deep depending on tides; and
- 13 c. the quality of Old River water diverted by WSID in the intake channel is  
14 poor, running from 800 to 1000 total dissolved solids.

15 **BETHANY DRAIN**

16 10. There is a drainage canal located in WSID called the Bethany Drain. The location  
17 of the Bethany Drain is accurately depicted on **EXHIBITS WSID0001, WSID0002, WSID0003**  
18 and **WSID0004**.

19 11. The Bethany Drain collects irrigation return water through tile drains from  
20 landowners within WSID, shallow groundwater from tile drains, and municipal drainage from  
21 lands within the City of Tracy and discharges that return water directly into WSID's intake  
22 channel. My understanding of the operation of Bethany Drain is based on personal experience  
23 over the last 20 years negotiating the agreements related to the operations of the Bethany Drain  
24 on behalf of WSID.

25 12. The Bethany Drain is exclusively owned, operated and maintained by WSID, and  
26 WSID maintains exclusive control over the Bethany Drain from its origination within the District  
27 boundaries along its entire course, until it discharges into the WSID intake canal. Title to the  
28 Bethany Drain was obtained by WSID over time, from the 1930's and 1940's. True and correct

1 copy of three deeds to portions of the Bethany Drain that exemplify the deeds held by WSID for  
2 the Bethany Drain are attached hereto as **EXHIBITS WSID0014, WSID0015 and WSID0016**.  
3 These deeds are official records of the district and are true and correct copies of public records  
4 recorded in San Joaquin County.

5 13. The history and original purpose of the Bethany Drain is explained in a WSID  
6 business record obtained from Naglee-Burk Irrigation District, maintained by the district since  
7 1924, and produced here as **Exhibit WSID0011**, which contains a true and correct copy of an  
8 August 1924 Report on Drainage prepared by Thomas H. Means Engineering for the Naglee-  
9 Burk Irrigation District ("**Drainage Report**").

10 14. The Drainage Report confirms that drainage is needed within WSID to protect  
11 lands from high water tables, and notes that in 1924 water stood at less than 4 feet from the  
12 surface within WSID. See **EXHIBIT WSID0011** at pages 14 - 19.

13 15. Municipal discharges into the Bethany Drain are allowed pursuant to a contract  
14 between the City of Tracy and WSID, as well as other similar contracts between WSID and other  
15 municipal and industrial properties. A true and correct copy of the 2010 Drainage Agreement  
16 between the City of Tracy and The West Side Irrigation District is provided as **EXHIBIT**  
17 **WSID0012**. The other drainage agreements between WSID and others are similar in form.

18 16. A map of the City's drainage system, its relationship to WSID drains, and other  
19 drainage information is included in the City of Tracy November 2012 Citywide Storm Drainage  
20 Master Plan, a true and correct copy of which is provided as **EXHIBIT WSID0013**, see pages  
21 1.15, 1.18, 2.1 and 2.3, and Figures 1.4 and 2.3. This Master Plan document was officially  
22 adopted by the City of Tracy City Council, is maintained by the City as an official document and  
23 business record of the City, and was obtained from the City of Tracy website at  
24 [http://www.ci.tracy.ca.us/documents/Final\\_Storm\\_Drainage\\_Master\\_Plan.pdf](http://www.ci.tracy.ca.us/documents/Final_Storm_Drainage_Master_Plan.pdf).

25 17. WSID discharges its drain water from the Bethany Drain into the WSID intake  
26 channel with the express intention of recapturing the water at its diversion pumps. This practice  
27 has continued for many years with the full knowledge of the State Water Resources Control  
28 Board.

1 18. By letter dated September 21, 1998, WSID notified State Water Board that it  
2 “obtains a substantial amount of water through recycled tail water from district irrigation, and  
3 from neighboring districts.” A true and correct copy of that September 21, 1998 letter is  
4 provided as **EXHIBIT WSID0017**. This letter is maintained as a business record of WSID.

5 19. By letter dated September 25, 1998, WSID again notified the State Water Board  
6 that “it is our position that this [Bethany Drain] water is not subject to appropriation because it  
7 does not reach a natural watercourse. The water is pumped from a man-made canal.  
8 Consequently, WSID has the right to use this water without a permit from the State Water  
9 Resources Control Board. As such, WSID does not need to divert such water under the terms of  
10 its License, it does not need to file a new appropriation, and it does not need to provide the Board  
11 with copies of agreements entitling it to use this water.” A true and correct copy of that  
12 September 25, 1998 letter is provided as **EXHIBIT WSID0018**. This letter is maintained as a  
13 business record of WSID.

14 **CITY OF TRACY WASTEWATER**

15 20. The City of Tracy operates a wastewater treatment plant and discharges treated  
16 wastewater effluent to Old River, a water of the United States, pursuant to Order R5-2012-0115  
17 (NPDES Permit CA0079154) issued by the Central Valley Regional Water Quality Control  
18 Board. A true and correct copy of NPDES Permit CA0079154, obtained from the State Water  
19 Board website at [http://www.waterboards.ca.gov/rwqcb5/board decisions/ adopted orders/  
20 san\\_joaquin/r5-2012-0115.pdf](http://www.waterboards.ca.gov/rwqcb5/board%20decisions/adopted%20orders/san_joaquin/r5-2012-0115.pdf) is provided as **EXHIBIT WSID0019**.

21 21. The City discharges approximately 9 million gallons per day ("**mgd**"), which is  
22 equivalent to 14 cfs, on a substantially continuous basis into Old River upstream from the  
23 District's point of diversion under License 1381. A true and correct copy of an excel spreadsheet  
24 submitted by the City of Tracy to the State Water Resources Control Board summarizing  
25 discharges from its wastewater treatment plant, as provided by the State Water Board  
26 Prosecution Team in its November 3, 2015 response to a Public Records Act Request submitted  
27 by WSID is provided as **EXHIBIT WSID0020**.

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1           22.     The City obtains water supplies from three sources: (1) South San Joaquin  
2 Irrigation District water delivered from the Stanislaus River (typically the majority of the City's  
3 supply); (2) United States Bureau of Reclamation water delivered from the Delta-Mendota  
4 Canal; and (3) local groundwater wells (typically the smallest portion of the City's supply). The  
5 City's treated wastewater discharges are foreign in source and/or foreign in time to the Old River  
6 flow. These sources are explained in the April 2011 City of Tracy Urban Water Management  
7 Plan, a copy of which is provided as **EXHIBIT WSID0021**. This Plan was formally adopted by  
8 the City of Tracy and is an official record and business record of the City of Tracy, and was  
9 obtained from the City of Tracy website at [http://www.ci.tracy.ca.us/documents/  
10 Urban\\_Water\\_Management\\_Plan\\_2011.pdf](http://www.ci.tracy.ca.us/documents/Urban_Water_Management_Plan_2011.pdf).

11           23.     On May 6, 2014, the City Council adopted Resolution 2014-165, authorizing the  
12 City to enter into a Wastewater Revocable License Agreement with WSID ("**2014 Agreement**")  
13 for the sale of treated wastewater from the City's wastewater treatment plant. The 2014  
14 Agreement provided that WSID may divert all of the City's wastewater discharges from April 1,  
15 2014 through October 31, 2014, estimated to be approximately 14 cfs, equivalent to 27.8 acre-  
16 feet per day, on a continuous basis. A true and correct copy of Resolution 2014-165 is provided  
17 as **EXHIBIT WSID0022**. A true and correct copy of the 2014 Agreement is provided as  
18 **EXHIBIT WSID0023**.

19           24.     On March 3, 2015, the Tracy City Council adopted Resolution 2015-033,  
20 authorizing the City to enter into a Wastewater Revocable License Agreement with WSID  
21 ("**2015 Agreement**") for the sale of treated wastewater from the City's wastewater treatment  
22 plant. The 2015 Agreement provided that WSID may divert all of the City's wastewater  
23 discharges from April 1, 2015 through October 31, 2015, estimated to be approximately 14 cfs,  
24 equivalent to 27.8 acre-feet per day, on a continuous basis. A true and correct copy of Resolution  
25 2015-033 is provided as **EXHIBIT WSID0024**. A true and correct copy of the 2015 Agreement  
26 is provided as **EXHIBIT WSID0025**.

27           25.     WSID did not provide the City with a written Commencement Notice and WSID  
28 did not purchase or divert wastewater from the City under the 2015 Agreement. On July 7, 2015

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the City terminated the 2015 Agreement. A true and correct copy of the July 8, 2015 Letter from the City of Tracy notifying WSID of the termination is PROVIDED as **EXHIBIT WSID0026**.

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

Executed this 15<sup>th</sup> day of January, 2016 in Modesto, California.

  
KARNA E. HARRIGFELD