

CALIFORNIA STATE  
WATER RESOURCES CONTROL BOARD  
PRE-HEARING CONFERENCE

In the Matter of:

Byron Bethany Irrigation  
District and West Side  
Irrigation District Joint  
Pre-Hearing Conference /

JOE SERNA, JR. BUILDING  
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY  
SIERRA HEARING ROOM  
1001 I STREET  
SACRAMENTO, CALIFORNIA

MONDAY, FEBRUARY 8, 2016

9:00 A.M.

Reported by:

PETER PETTY

APPEARANCES

**CALIFORNIA WATER RESOURCES BOARD**

**Department of Water Rights**

Board Members Present

Tam Doduc, Hearing Officer  
Frances Spivy-Weber, Vice Chair

Staff Present

Nicole Kuenzi, Legal Staff  
Diane Riddle, Environmental Program Manager  
Ernie Mona  
Jean McCue  
Jane Farwell-Jensen  
Michael Buckman, Hearing Unit Supervisor

**Interested Parties**

Division of Water Rights

Andrew Tauriainen, Senior Staff Counsel

CA Dept. of Water Resources

Robin McGinnis

Byron Bethany Irrigation District

Daniel Kelly, Somach Simmons & Dunn  
Michael Vergara, Somach Simmons & Dunn  
Rick Gilmore, Bryon Bethany Irrigation District

West Side Irrigation District/Banta-Carbona Irrigation  
District/Patterson Irrigation District

Jeanne M. Zolezzi, Herum, Crabtree, Suntag

South Delta Water Agency

Dean Ruiz

APPEARANCES

Central Delta Water Agency

Jennifer Spaletta

Richard Morat

Richard Morat

City/County of San Francisco

Jonathan Knapp

Robert Donlan

San Joaquin Tributaries Authority

Tim O'Laughlin, O'Laughlin & Paris

Valerie Kincaid, O'Laughlin & Paris

State Water Contractors

Stefanie Morris

Westlands Water District

Rebecca Akroyd, Kronick, Moskovitz, Tiedemann & Girard

Philip A. Williams, Deputy General Counsel Westlands Water District

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## P R O C E E D I N G S

1  
2 February 8, 2016

9:00 a.m.

3 HEARING OFFICER DODUC: All right. Good morning,  
4 everyone. Happy New Year. New Year of the Monkey.

5 You know, when I was growing up my parents always  
6 emphasized, and perhaps it was just a ploy for us to  
7 behave, but how the first day of the New Year goes is how  
8 the rest of the year will go.

9 So, I find it a bit ominous that I'm starting my  
10 New Year this way. But I have complete faith in you that  
11 we will have a productive, efficient discussion, and the  
12 rest of my year will be wonderful. So, my fate rests in  
13 your hands today, people.

14 Okay, having just said that I am -- good morning,  
15 again, I am State Water Board Member Tam Doduc, Hearing  
16 Officer for the Byron Bethany Irrigation District,  
17 Administrative Civil Liability Complaint.

18 And as you'll recognize, to my right is State  
19 Water Board Vice Chair Fran Spivy-Weber, Hearing Officer  
20 for the West Side Irrigation District Draft Cease and  
21 Desist Order.

22 Assisting us today are our Staff Counsel, Nicole  
23 Kuenzi, Staff Engineers Ernie Mona and Jean McCue, Staff  
24 Environmental Scientist Jane Farwell-Jensen, and Michael  
25 Buckman, Chief of the Hearings Unit. Diane Riddle is also

1 here.

2           So, this is the second Pre-Hearing Conference for  
3 the Hearings on the BBID ACL Complaint and the West Side  
4 Draft CDO. This Pre-Hearing Conference will address  
5 outstanding procedural issues relating to the conduct of  
6 both the Consolidated Phase I of the hearings regarding  
7 water availability, and the separate Phase II of those  
8 hearings regarding all remaining key issues of the  
9 respective enforcement actions.

10           So, our goal today is to organize the conduct of  
11 the hearings, make sure that they are proceeding in an  
12 orderly and expeditious manner.

13           There will not be an opportunity today for public  
14 comment.

15           All right, let me begin with some general  
16 announcements. Please look around, now, and identify the  
17 exits closest to you. Should an alarm sound, we are  
18 required to evacuate this room immediately. Please take  
19 your valuables and please use the stairways, not the  
20 elevators, down to the first floor and exit to the  
21 relocation site, which is the park across the street. If  
22 you cannot use the stairs, you will be directed to a  
23 protective vestibule inside a stairwell.

24           This Pre-Hearing Conference is being webcast on  
25 the internet and also audio and video recorded. So, please

1 speak into the microphone and begin by stating your name  
2 and affiliation.

3 A Court Reporter is present today. The  
4 transcript will be available on the State Water Board's  
5 Hearing website or you may make arrangements with the Court  
6 Reporting Service.

7 Finally, and most importantly, please take a  
8 moment and turn off or mute your cell phones. Even if you  
9 think it's already off or muted, please check anyway.  
10 Thank you.

11 All right, so this Pre-Hearing Conference is  
12 being held in accordance with our December 16, 2015  
13 Procedural Ruling and the Notice of Revised Schedule for  
14 Public Hearings dated January 8, 2016.

15 The Pre-Hearing Conference is focused on  
16 procedural matters and will not be used to hear arguments  
17 on or determine the merits of any hearing issues. Only the  
18 parties participating in the evidentiary portion of the  
19 hearing will be invited to speak today and on the specific  
20 procedural issues for discussion.

21 Public comments, like I said earlier, will not be  
22 accepted today. But public comments in the form of policy  
23 statements will be allowed at the beginning of the hearing,  
24 which is scheduled to begin on March 21st.

25 So with that, let's begin with roll call. As I

1 identify each party, please speak into the microphone and  
2 identify, state your name.

3 So, we'll begin with the Division of Water Rights  
4 Prosecution Team.

5 MR. TAURIAINEN: Thank you. Good morning.  
6 Andrew Tauriainen, State Water Board Office of Enforcement,  
7 for the Prosecution Team.

8 HEARING OFFICER DODUC: Thank you. Byron Bethany  
9 ID.

10 MR. KELLY: Good morning. Dan Kelly with Somach  
11 Simmons & Dunn for Byron Bethany Irrigation District. To  
12 my left is Rick Gilmore, the General Manager of BBID.

13 HEARING OFFICER DODUC: Thank you. West Side  
14 Irrigation District?

15 MR. VERGARA: Sorry. Mike Vergara, also with  
16 Somach Simmons & Dunn on behalf of BBID.

17 MS. ZOLEZZI: Good morning. Jeanne Zolezzi,  
18 Herum, Crabtree, Suntag, General Counsel for the West Side  
19 Irrigation District.

20 HEARING OFFICER DODUC: Patterson Irrigation  
21 District? You might as well keep the microphone for now,  
22 Ms. Zolezzi.

23 MS. ZOLEZZI: Keep going. Jeanne Zolezzi,  
24 General Counsel for Patterson Irrigation District and  
25 Banta-Carbona Irrigation District.

1 HEARING OFFICER DODUC: Thank you. So efficient,  
2 good start.

3 South Delta Water Agency?

4 MR. RUIZ: Good morning. Dean Ruiz for South  
5 Delta Water Agency.

6 HEARING OFFICER DODUC: Thank you. Central Delta  
7 Water Agency.

8 MS. SPALETTA: Good morning. Jennifer Spaletta  
9 for Central Delta Water Agency.

10 HEARING OFFICER DODUC: Richard Morat?

11 MR. MORAT: Richard Morat for Richard Morat.

12 HEARING OFFICER DODUC: I guess one should always  
13 be for oneself.

14 City and County of San Francisco?

15 MR. KNAPP: Jonathan Knapp for the City and  
16 County of San Francisco. And to my right I have Robert  
17 Donlan from Ellison, Schneider & Harris, outside counsel  
18 for the City and County.

19 HEARING OFFICER DODUC: Thank you. California  
20 Department of Water Resources?

21 MS. MC GINNIS: Robin McGinnis, Attorney for the  
22 California Department of Water Resources.

23 HEARING OFFICER DODUC: San Joaquin Tributaries  
24 Authority?

25 MR. O'LAUGHLIN: Good morning. Tim O'Laughlin,

1 San Joaquin Tributaries Authority.

2 MS. KINCAID: Valerie Kincaid, also for the San  
3 Joaquin Tributaries Authority.

4 HEARING OFFICER DODUC: State Water Contractors?

5 MS. MORRIS: Good morning. Stefanie Morris,  
6 General Counsel, State Water Contractors.

7 HEARING OFFICER DODUC: Westlands Water District?

8 MS. AKROYD: Good morning. Rebecca Akroyd,  
9 Kronick, Moskovitz, for Westlands Water District.

10 And to my left, Phil Williams, Deputy General  
11 Counsel for Westlands Water District.

12 HEARING OFFICER DODUC: Thank you. Have I  
13 identified all the parties?

14 All right. All right, a couple of quick items.  
15 Let's begin with Mr. Morat. I understand from your  
16 November 30th e-mail that you have a timing issue and need  
17 to provide your BBID Phase II testimony during the week of  
18 March 21st. We will make sure you have that opportunity.  
19 And, if necessary, we'll take you out of sequence in order  
20 to do so on Friday, March 25th.

21 MR. MORAT: Thank you.

22 HEARING OFFICER DODUC: All right. Mr. Knapp,  
23 your Notice of Intent to Appear for the BBID Hearing on  
24 behalf of the City and County of San Francisco indicated  
25 that you intend to call Daniel Steiner as a witness.

1     However, you did not submit any testimony for him. Do you,  
2     at this time, anticipate participating by Cross-Examination  
3     or Rebuttal, only?

4             MR. KNAPP: That is correct. Would you like us  
5     to submit a Revised Notice of Intent to Appear?

6             HEARING OFFICER DODUC: Is that absolutely  
7     necessary? Well, we have it on record. That's good  
8     enough.

9             MS. KUENZI: No, I don't think you need to do  
10    that. Thank you.

11            MR. KNAPP: Okay, thanks.

12            HEARING OFFICER DODUC: All right. The third  
13    item, Ms. Zolezzi, Mr. -- well, not Mr. Herrick, but Mr.  
14    Ruiz, right, and Ms. Spaletta, you jointly submitted  
15    exhibits on behalf of West Side, South Delta, and Central  
16    Delta, which I'm very pleased by. Are you planning on  
17    coordinating on other aspects of the hearings?

18            MS. ZOLEZZI: Other than that particular  
19    testimony?

20            HEARING OFFICER DODUC: In terms of Direct,  
21    Cross. I mean, are you coordinating on --

22            MS. ZOLEZZI: We will attempt to coordinate  
23    whenever we can. In particular, as to those witnesses,  
24    yes, our Direct testimony will be coordinated. As opposed  
25    to other Cross-examination, we will not necessarily be

1 coordinating those issues.

2 HEARING OFFICER DODUC: I see nodding of heads,  
3 so no one disagreed with that. All right, thank you.

4 Any other housekeeping questions before we jump  
5 in?

6 All right, not seeing any, let's turn now to the  
7 meatier topics for today. We'll begin with Ordering Time  
8 Limits for Opening Statements and Direct testimony. Okay,  
9 to be clear, only one written Opening Statement, which I  
10 may also refer to as Opening Brief, may be submitted by  
11 each party in each proceeding.

12 Written Opening Statements shall not exceed 10  
13 pages in length, double-spaced, in 12 point font. I prefer  
14 Arial, but will accept other fonts.

15 Alternatively, parties may file a Joint Opening  
16 Statement of up to a maximum of 20 pages in length, in each  
17 proceeding.

18 A written Rebuttal of Written Opening Statements  
19 will not be accepted. The opportunity to respond in  
20 writing to Opening Statements is in your Closing Briefs.

21 We will now, all of the parties, to make a single  
22 or Opening Statement that addresses both phases of both  
23 hearings and that will be heard before we proceed to  
24 summaries of Direct testimony in Phase I.

25 Opening Statements should briefly summarize the

1 parties' objectives in the case, their major points they  
2 intend to establish, and the relationship between the major  
3 points and the key issues.

4 Policy-oriented statements may also be included  
5 in the Opening Statements.

6 So, Opening Statements will be presented in the  
7 following order, according to the stated time limits. A  
8 party may choose to combine their allowed time with that of  
9 other parties. However, if you do that, we need to be  
10 informed of these changes. And if you have that today,  
11 that would be most helpful.

12 So in this order, Division of Water Rights  
13 Prosecution Team, BBID and West Side. Each of you will  
14 have 20 minutes for your opening statement.

15 All other the parties will be limited to five  
16 minutes each and will proceed in the following order.  
17 South Delta, Mr. Morat, Central Delta, City and County of  
18 San Francisco, San Joaquin Tributaries Authority,  
19 California Department of Water Resources, State Water  
20 Contractors, Patterson Irrigation District, Banta-Carbona  
21 Irrigation District, and Westlands Water District.

22 Questions, comments on this? All right, we're  
23 off to a great start.

24 Now, let's move on to Phase II. That was for  
25 Phase I. So, let's move on to Phase II, Summaries of

1 Direct Testimony for Phase II of BBID will be presented in  
2 the following order. The Division of Water Rights  
3 Prosecution Team, then Byron Bethany Irrigation District.  
4 Each of you will have one hour. Then South Delta Water  
5 Agency -- did I miss something?

6 Oh, that was Opening Statement. Okay, I'm being  
7 too efficient. Sorry about that.

8 Direct testimony, okay. Witnesses should only  
9 summarize the key points in their written testimony and  
10 should not read their written testimony into the record.

11 Also, please don't make any legal or policy  
12 arguments during the evidentiary portion of the hearing  
13 through the presentation of Direct testimony, Cross-  
14 Examination, or otherwise.

15 So, Phase I of the Direct Testimony will be  
16 presented in the following order and within these time  
17 limits. Division of Water Rights Prosecution Team will  
18 have an hour and a half. Likewise, Byron Bethany. And  
19 then West Side Irrigation District. Each of you an hour  
20 and a half. South Delta Water Agency will be fourth, with  
21 30 minutes.

22 Keep in mind that even with these time limits and  
23 other time limits that we'll be discussing today, we will  
24 move things along if we feel that the testimony is  
25 stagnating. So, keep that in mind.

1 Okay, so that was Direct Testimony for Phase I.

2 MR. O'LAUGHLIN: Ma'am, I have a quick --

3 HEARING OFFICER DODUC: Mr. O'Laughlin.

4 MR. O'LAUGHLIN: Thank you. I have a quick  
5 question. In regards to the no policy and no legal  
6 testimony in Direct testimony, do you envision that being  
7 cleaned up by motions in limine being brought by the  
8 parties ahead of time?

9 HEARING OFFICER DODUC: And we also ask for  
10 briefs.

11 MR. O'LAUGHLIN: Okay, thank you.

12 HEARING OFFICER DODUC: Okay. Sorry for my  
13 jumping around there. So, that's an hour and a half each  
14 for Division of Water Rights, Bryon Bethany, West Side, and  
15 30 minutes for South Delta.

16 Now, Phase II. I was so eager to get to Phase  
17 II. Again, Phase II for BBID, the Water Rights Prosecution  
18 Team, followed by Bryon Bethany, each having an hour. The  
19 South Delta Water Agency will have 20 minutes. And Mr.  
20 Morat, you will have 10, as requested.

21 Questions, comments?

22 Phase II for West Side will, again, start with  
23 the Division of Water Rights Prosecution Team, with one  
24 hour. West Side Irrigation District with one hour. And  
25 South Delta with 20.

1           Questions, comments? Mr. Kelly has his hand  
2 right there. No, all right.

3           Let's move on to Order and Time Limits for Cross-  
4 Examination. I will remind you that Cross-Examination is  
5 not limited to the scope of Direct testimony. Cross-  
6 Examination must, however, be limited to the factual issues  
7 in dispute. The scope of Cross-Examination of any Redirect  
8 or Rebuttal testimony will be limited to the scope of the  
9 Redirect or Rebuttal testimony, respectively.

10           Parties may choose to combine your allowed time  
11 for Cross-Examination. However, if you do, please inform  
12 us ahead of time.

13           Okay, so let's -- specifically, for Phase I,  
14 Cross-Examination will be conducted in the following order.  
15 The Prosecution Team, BBID, West Side. Each of these  
16 parties will have one hour to conduct Cross-Examination per  
17 witness or panel of witnesses.

18           All other parties will be limited to 10  
19 minutes per witness or panel of witnesses, and will proceed  
20 in the following order. South Delta, then Central Delta,  
21 City and County of San Francisco, San Joaquin Tributaries  
22 Authority, followed by Department of Water Resources, then  
23 the State Water Contractors, then Patterson Irrigation  
24 District, Banta-Carbone, and then Westlands.

25           MR. KELLY: What number did I --

1 HEARING OFFICER DODUC: Mr. Kelly?

2 MR. KELLY: Yes, thank you. Is the Cross-  
3 Examination going to follow directly behind Direct  
4 testimony? And the reason I ask this is because you talked  
5 about Direct for Phase I, and then Phase II, and then  
6 Cross.

7 HEARING OFFICER DODUC: Yes.

8 MR. KELLY: So that it will be Direct testimony,  
9 Cross --

10 HEARING OFFICER DODUC: Yes, Direct testimony for  
11 Phase I, Cross for Phase I.

12 MR. KELLY: Thank you.

13 MR. VERGARA: I also have a question.

14 HEARING OFFICER DODUC: Yes.

15 MR. VERGARA: You mentioned that you would keep  
16 things moving along if they looked like they were slogging  
17 a bit. But what about the reverse of that? Will you allow  
18 more time in the event it looks like that's required?

19 HEARING OFFICER DODUC: If it's appropriate. If  
20 you make a convincing case as to why it's relevant, why  
21 it's necessary, and we feel that it's appropriate.

22 Ms. Spaletta?

23 MS. SPALETTA: I think Mr. O'Laughlin was first,  
24 but I can go ahead.

25 HEARING OFFICER DODUC: Oh, I always save Mr.

1 O'Laughlin for last.

2 MS. SPALETTA: Okay, good. I do have a question  
3 about the time limits. I think you said per witness or per  
4 panel. For example, in this case the Prosecution Team's  
5 written testimony for their witnesses is rather voluminous.  
6 I think Ms. Mrowka, Mr. Coats and Mr. Yeazell each  
7 presented almost 20 pages of written testimony. So, if we  
8 were to combine them on a panel, I'm understanding your  
9 ruling that our -- for example, BBID and West Side's Cross  
10 would be limited to one hour for the panel, whereas --

11 HEARING OFFICER DODUC: That's correct.

12 MS. SPALETTA: Yeah, whereas if they were  
13 separate, it would be one hour each. I'm a little  
14 concerned that that may be insufficient given the breadth  
15 of the written testimony that was submitted by the  
16 Prosecution Team.

17 HEARING OFFICER DODUC: Thank you. Mr.  
18 O'Laughlin, you now may speak.

19 MR. O'LAUGHLIN: Thank you. Actually, I want to  
20 join in that. It's a problem, I think, with these panels.  
21 I understand the efficiency in the panels and wanting to do  
22 that. But on Cross-Examination it's pretty clear here,  
23 when you look at the breadth of the testimony being given,  
24 that there is three or four key witnesses. And those  
25 witnesses should be taken individually, in the time limits

1 allocated to those. And then if there's other witnesses, I  
2 won't say that they're less important, but they probably  
3 aren't as meaningful, and we can look at those maybe in  
4 panels, or less Cross-Examination time on those.

5 But I think given the -- if you look at who's  
6 being proposed, and like Jennifer said, the depth of the  
7 presentation being made, I think doing panels -- if you  
8 were to put Coats and Yeazell up on a panel, it would be  
9 very difficult for the SJTA, in 10 minutes, to Cross-  
10 Examine both of them.

11 So, I think if you look at that and maybe play  
12 around with that a little bit, I think we all agree with  
13 what we're trying to get at, spend the time on the  
14 witnesses that are important and on the ones that are less  
15 important lower the time limit.

16 HEARING OFFICER DODUC: Thank you. I hear your  
17 concerns and I appreciate them. Let's stick with these,  
18 initially, as I answered the other question. We'll make  
19 that decision as we go along with the Cross-Examination.  
20 If you keep our interest, if you keep it moving, if you  
21 make it relevant we'll consider, then, extending the time  
22 limits.

23 But for planning purposes let's see if we can at  
24 least start with that.

25 MR. O'LAUGHLIN: Well, and if I may, I have one

1 follow-up question. Will we know ahead of time if the  
2 Prosecution Team is going to be calling witnesses  
3 individually or as panels? That's important for us to try  
4 to coordinate on our side, as well.

5 HEARING OFFICER DODUC: Would the Prosecution  
6 Team like to address that?

7 MR. TAURIAINEN: The witnesses will be in a  
8 panel.

9 HEARING OFFICER DODUC: Thank you. Mr.  
10 O'Laughlin, we aim to please.

11 Ms. Spaletta?

12 MS. SPALETTA: Could we clarify whether all of  
13 the witnesses will be on one panel or whether there will be  
14 multiple panels of combinations for their witnesses?

15 HEARING OFFICER DODUC: Please address?

16 MR. TAURIAINEN: I can't imagine why I would want  
17 multiple panels.

18 HEARING OFFICER DODUC: But you reserve the right  
19 just in case.

20 MR. TAURIAINEN: Yes, yes.

21 HEARING OFFICER DODUC: See, I'm beginning to  
22 know you guys.

23 Ms. Zolezzi -- oh, I'm sorry, Ms. Spaletta, were  
24 you finished or --

25 MS. SPALETTA: I think that if all of the

1 witnesses are on one panel it could create tremendous  
2 difficulty for Cross-Examination. For example, Mr. Nemeth,  
3 from DWR, has a very specific testimony about how he  
4 computes full natural flow. Whereas, Mr. Yeazell has a  
5 very specific testimony about how he put together a rather  
6 complex Excel workbook. They really have almost nothing to  
7 do with each other, other than data entry.

8           So, it would be extremely difficult to have them  
9 on the same panel and it could end up being very confusing.  
10 So, I think we do need to just be very careful with the  
11 Cross-Examination because Cross-Examination would need to  
12 be directed at a specific witness. And another witness on  
13 the panel should not be allowed to answer the question.

14           So, I'm concerned about having all of the  
15 Prosecution Team's witnesses on one panel. I think it will  
16 be prejudicial for time limit purposes. But I also think  
17 it's going to create a very confusing record given the  
18 technical nature of what these witnesses are testifying to.

19           MR. O'LAUGHLIN: Well, in --

20           HEARING OFFICER DODUC: Mr. O'Laughlin, I think  
21 Ms. Zolezzi was next.

22           MS. ZOLEZZI: And not to stretch this out, I  
23 agree with Ms. Spaletta. I'm very concerned that a panel  
24 is being created, of witnesses who are not related to one  
25 another, in order to reduce the opportunity for Cross-

1 Examination. These are very complex witness statements  
2 that we've seen. We don't intend to Cross-Examine for an  
3 hour just to fill it up. But if there is important  
4 information we're trying to elicit from these witnesses, we  
5 will, you know, reserve the right to object and request  
6 more time.

7 HEARING OFFICER DODUC: Thank you.

8 Now, Mr. O'Laughlin.

9 MR. O'LAUGHLIN: I have every faith in the two  
10 Hearing Officers in making an orderly proceeding and  
11 protecting the procedural due process rights. But by the  
12 very nature of a panel of seven or eight, and you've put a  
13 time limit of 10 minutes on my client, then I get one  
14 minute per each witness. And I'm not saying that's going  
15 to happen. I mean, we can ask and I know you're very fair  
16 in the heart of the matter.

17 But the way it's being set up right now, and I  
18 knew that that was coming, is that he's going to try to  
19 limit the exposure of his witnesses to Cross-Examination  
20 and the procedural process rights of the rest of us.

21 And my statement here, I'm going to go a little  
22 bit beyond this on a legal matter. From a policy  
23 perspective, I think it's very important that if we're  
24 going to continue forward, and I'm not saying we will or  
25 won't in the State, with a methodology through curtailment

1 as we currently are doing, and with this methodology that's  
2 being employed that we fully explore that in this hearing  
3 process.

4 And I'm just concerned that right off the bat, by  
5 putting everybody in a panel and limiting the time  
6 exposure, we're not going to have that ability to have that  
7 thorough vetting that we should.

8 HEARING OFFICER DODUC: Thank you.

9 MR. O'LAUGHLIN: And that's just a policy  
10 statement. Thank you.

11 HEARING OFFICER DODUC: No, thank you, I  
12 appreciate that. And at the risk of repeating myself for  
13 the third time, I am certainly not going to direct the  
14 Prosecution Team as to how they wish to present their  
15 witnesses. But it's Cross-Examination of those witnesses  
16 as a panel is something that -- you know, I'm aware of your  
17 concerns, now that you've raised it multiple times, and I  
18 will assure you again, for the third time, that the Vice  
19 Chair and I will exercise our authority as the Hearing  
20 Officer to ensure that the Cross-Examinations are  
21 appropriate, and that adequate times are provided as  
22 sufficient, as you convince us of the relevancy of your  
23 Cross-Examination.

24 So, with that, I don't want to keep harping on  
25 this issue. You have our assurance. We recognize that

1 there will be a challenge associated with it. These are  
2 time frames for you to start to work with, to start to  
3 organize your thoughts. And we will issue rulings as  
4 appropriate during the Cross-Examination.

5 Yes, the Prosecution Team. I still can't  
6 pronounce your last name.

7 MR. TAURIAINEN: Tauriainen.

8 HEARING OFFICER DODUC: Tauriainen.

9 MR. TAURIAINEN: Yes.

10 HEARING OFFICER DODUC: Thank you.

11 MR. TAURIAINEN: Two very brief points. The  
12 first, and perhaps this will be a topic for later in this  
13 Pre-Hearing Conference, but depending on how the issues  
14 need to be presented in each phase, the Prosecution Team  
15 might not be putting all of its listed witnesses on in  
16 Phase I.

17 HEARING OFFICER DODUC: Correct.

18 MR. TAURIAINEN: The second point is there's a  
19 flip side to this whole time limit thing and that is that  
20 Byron-Bethany and West Side, and Central and South Delta  
21 are all sharing witnesses and exhibits. And they're  
22 essentially getting twice as much time as the Prosecution  
23 Team, both for Direct and for Cross-Examination.

24 So, they're already getting three hours plus  
25 Tim's 10 minutes, and everybody else's extra time they're

1 going to request. So, I'm not sure exactly where the, you  
2 know, due process issues lie because the Prosecution Team  
3 is the one being restricted here.

4 HEARING OFFICER DODUC: All right. All right,  
5 this is not the time for that argument. And I will say for  
6 now, as you all know, it's the quality, not the quantity  
7 that counts. And that was just Phase I.

8 For Phase II you will have more time for Cross-  
9 Examination, Mr. O'Laughlin. Cross-Examination in Phase II  
10 of BBID will be conducted in the following order.

11 Prosecution Team, followed by BBID. Each of you  
12 will be allowed one hour for your Cross-Examination per  
13 witness or panel witnesses, with the caveat that the  
14 Hearing Officer will provide additional time, as  
15 appropriate.

16 All other parties will be limited to 10 minutes  
17 per witness or panel of witnesses, and will proceed in the  
18 following order. South Delta, Central Delta, City and  
19 County of San Francisco, San Joaquin Tributaries Authority,  
20 California Department of Water Resources, State Water  
21 Contractors, Patterson Irrigation District, and then Banta-  
22 Carbona Irrigation District.

23 Let me finish up Phase II for West Side. Cross-  
24 Examination in Phase II of the West Side hearing will be  
25 conducted in the following order. The Prosecution Team and

1 then West Side. Each of you will be allowed one hour to  
2 conduct Cross-Examination per witness or panel of  
3 witnesses.

4 All other parties will be limited to 10 minutes  
5 and will proceed in this order. South Delta, Central  
6 Delta, City and County of San Francisco, San Joaquin  
7 Tributaries Authority, California Department of Water  
8 Resources, State Water Contractors, and then Westlands  
9 Water District.

10 Questions and comments? And let's not hear the  
11 same concern repeated again. We heard you and the same  
12 answer applies.

13 Mr. Kelly?

14 MR. KELLY: Yes, thank you. For the Phase II of  
15 West Side, BBID filed a Notice of Intent to Appear, but I  
16 didn't hear our name on the Cross-Examination in the West  
17 Side proceeding. I just want to make sure that we are  
18 provided --

19 HEARING OFFICER DODUC: We will check on that,  
20 thank you.

21 MR. KELLY: Thank you. Thank you.

22 HEARING OFFICER DODUC: Ms. Zolezzi?

23 MS. ZOLEZZI: It would be the same for the West  
24 Side Irrigation District in the BBID Phase II.

25 HEARING OFFICER DODUC: All right. Glad to see

1 you were paying attention.

2 VICE CHAIR SPIVY-WEBER: And just in case folks  
3 are wondering, Tam will be the Hearing Officer for Phase II  
4 and I will be the Hearing Officer for Phase III.

5 HEARING OFFICER DODUC: And are we flipping a  
6 coin again for Phase I?

7 VICE CHAIR SPIVY-WEBER: And we flipped a coin  
8 for the beginning.

9 HEARING OFFICER DODUC: Wait a minute, I thought  
10 the coin was only for the Pre-Hearing Conference.

11 VICE CHAIR SPIVY-WEBER: And Tam lost. She can  
12 lose.

13 HEARING OFFICER DODUC: Time out. That was the  
14 Vice Chair taking unfair advantage of me.

15 All right. I have to learn from that, hum.

16 If there's no other questions with respect to  
17 Cross-Exam, let's move on to Redirect and Recross. At our  
18 discretion during the hearing we may allow Redirect  
19 Examination upon an offer of proof as to the substance,  
20 purpose and relevancy of the expected testimony. And if  
21 so, we will set a time limit at that time for Redirect and  
22 Recross Examination.

23 Any questions on that?

24 Okay, let's move on to Order of and Time Limits  
25 for Presentation of Oral Summary of Written Rebuttal

1 Testimony.

2 So, for Phase I the Prosecution Team, BBID and  
3 West Side will each be allowed 30 minutes to summarize  
4 written Rebuttal testimony and offer Rebuttal testimony  
5 that could not have been previously submitted in writing.

6 All other parties will be limited to 10 minutes  
7 per party, for Rebuttal.

8 The order of presentation for Rebuttal will be  
9 the same as the order for Cross-Examination.

10 In Phase II -- Mr. Kelly?

11 MR. KELLY: Yes, Board Member Doduc, thank you.  
12 I just want to make sure that I understood what you said.  
13 You said that written Rebuttal will be for testimony that  
14 could not be previously provided in writing.

15 Do you mean previously provided in writing as  
16 Direct testimony? In other words, are folks going to be  
17 limited for Rebuttal to what they presented by the end of  
18 February in written Rebuttal testimony?

19 HEARING OFFICER DODUC: I'm going to turn to  
20 counsel here for the legal consideration of that.

21 MS. KUENZI: Let me make sure I understood the  
22 question. I think the oral presentation of Rebuttal  
23 testimony can include summaries of that written Rebuttal  
24 that's submitted at the end of February, as well as any  
25 other testimony that could not have been anticipated prior

1 to that time.

2 HEARING OFFICER DODUC: That came as a result of  
3 Direct testimony.

4 MR. KELLY: So, okay. Again, I appreciate that  
5 and let me make sure that I understood. So, everybody's  
6 written Direct testimony has been submitted and testimony  
7 at the hearing under Direct is going to be limited to  
8 what's been submitted in writing and presented to the  
9 parties.

10 We all have an opportunity by February 22nd, I  
11 believe, to provide written Rebuttal testimony and any  
12 Rebuttal exhibits that we wish to use.

13 Is it also true, then, that folks can provide  
14 additional testimony, outside of what's been provided under  
15 written Direct, under written Rebuttal at the hearing?

16 MS. KUENZI: If an issue arises, for example in  
17 Cross-Examination, that could not have been anticipated, it  
18 wasn't -- it didn't previously arise in the Direct  
19 testimony, the written testimony.

20 MR. KELLY: Okay.

21 MS. KUENZI: I would imagine that might occur and  
22 that was the intent was to allow oral Rebuttal in response  
23 to those issues that couldn't have been anticipated.

24 MR. KELLY: okay, thank you.

25 HEARING OFFICER DODUC: The relevancy here being

1 the key factor.

2 MR. KELLY: Thank you.

3 HEARING OFFICER DODUC: All right, Phase II  
4 Rebuttals of BBID. The Prosecution Team and BBID will each  
5 be allowed 30 minutes to provide Rebuttal testimony and  
6 offer any testimony that could not have been previously  
7 submitted in writing, as we just discussed.

8 All other parties will be limited to 10 minutes  
9 per party. And again, the order will be the same as that  
10 for the order of Cross-Examination.

11 On West Side, Phase II of West Side, the  
12 Prosecution Team and West Side will each be allowed 30  
13 minutes to summarize written Rebuttal testimony and, again,  
14 offer any Rebuttal testimony that could not have been  
15 previously submitted in writing.

16 Likewise, all other parties will be limited to 10  
17 minutes per party.

18 Okay, not seeing any questions, we will move on,  
19 now, to closing briefs.

20 Oh, Ms. Morris?

21 MS. MORRIS: I apologize. Stefanie Morris, State  
22 Water Contractors. I want to make sure that the same  
23 consideration will be given, not to raise it again, but on  
24 Rebuttal if we need additional time, if we make an offer of  
25 proof because it's technical modeling information,

1 potentially, that might take more than 10 minutes to  
2 summarize?

3 HEARING OFFICER DODUC: That is correct, Ms.  
4 Morris.

5 MS. MORRIS: Thank you.

6 HEARING OFFICER DODUC: Okay, Closing Briefs.  
7 Oral Closing Arguments will not be permitted. We will,  
8 however, allow submission of written Closing Briefs.  
9 Additional procedural details will be determined at a later  
10 time during the proceedings.

11 I will remind you that your Closing Briefs should  
12 only address those facts and legal arguments previously  
13 raised during the hearing.

14 And at this time we do not expect to allow  
15 Responses to Closing Briefs.

16 Ms. Kincaid?

17 MS. KINCAID: Yes. Do you plan on allowing  
18 Closing Briefs at the conclusion of Phase I or at the  
19 conclusion of Phases I and II, respectively, for each  
20 matter?

21 HEARING OFFICER DODUC: The latter.

22 MS. KINCAID: Thank you.

23 HEARING OFFICER DODUC: All right. I will remind  
24 the parties again that there shall be no ex parte  
25 communications with State Water Board Members or the State

1 Water Board Hearing Team Staff and Supervisors regarding  
2 substantive or controversial procedural issues within the  
3 scope of these proceedings.

4 Any communications regarding potentially  
5 substantive or controversial procedural matters including,  
6 but not limited to, evidence, briefs and motions must  
7 demonstrate that all parties were served and the manner of  
8 service.

9 That's all I have. Oh, no, I see hands. Mr.  
10 Kelly?

11 MR. KELLY: Yeah, thank you. There were several  
12 briefs filed by several different parties that raised  
13 jurisdictional issues. Is it the intent of the Hearing  
14 Team to actually issue rulings on any of those briefs and  
15 legal issues prior to the Evidentiary Hearing?

16 HEARING OFFICER DODUC: We are reviewing and  
17 considering those briefs at the moment. I will let you  
18 know as soon as we come to some preliminary decisions.

19 MR. KELLY: Thank you.

20 HEARING OFFICER DODUC: Mr. O'Laughlin?

21 MR. O'LAUGHLIN: Also, we're going to be filing  
22 Motions in Limine, and I was wondering what the time period  
23 for be for rulings on Motions in Limine. Because are we  
24 going to have a Pre-Hearing Conference, again, or are we  
25 going to submit our Motions in Limine and just receive a

1 ruling from the Hearing Team, and then prepare for the  
2 testimony?

3 HEARING OFFICER DODUC: It will more likely be  
4 the latter. I don't anticipate a third Pre-Hearing  
5 Conference.

6 MR. O'LAUGHLIN: Thank you.

7 HEARING OFFICER DODUC: Ms. Spaletta?

8 MS. SPALETTA: Thank you. I have a similar  
9 question. Sometimes it's helpful, actually, to have some  
10 type of oral argument on Motions in Limine because  
11 sometimes the Hearing Officers might want an offer of proof  
12 as to a witness's testimony or a further explanation to  
13 rule on the Motion in Limine.

14 I do think it might actually be helpful to have  
15 those rulings at least a week in advance of the hearing.  
16 So, I would just like to make the request that the Hearing  
17 Officers, when you review them, consider whether you might  
18 want to ask the parties to come in for oral argument, but  
19 to have a goal, potentially, of ruling on the Motions in  
20 Limine at least a week before the hearing commences.

21 It would be very helpful to organize the  
22 presentation of testimony and limit it based on your  
23 rulings.

24 HEARING OFFICER DODUC: Thank you. We'll take  
25 that under advisement.

1           Anyone else? Yes?

2           MS. MC GINNIS: Thank you. Robin McGinnis for  
3 the California Department of Water Resources. I have a  
4 question about the reply briefs, so legal issues in the  
5 BBID matter.

6           HEARING OFFICER DODUC: The reply briefs?

7           MS. MC GINNIS: Right. So, we are allowed to  
8 file reply briefs to the legal issues --

9           HEARING OFFICER DODUC: Oh.

10          MS. MC GINNIS: -- allowed in the BBID matter.  
11 So, I understand we're allowed to file replies to each of  
12 the motions, in each of the proceedings. But I'm  
13 wondering, are we allowed to file one brief in response to  
14 each of the briefs that were filed on the legal issues in  
15 the BBID matter, or just one reply brief on the --

16          HEARING OFFICER DODUC: I will prefer -- I much  
17 prefer one reply brief.

18          MS. MC GINNIS: Okay. That's our intent, to be  
19 able to reply in 10 pages to all of the briefs that were  
20 filed. But since the issues that were raised in those  
21 briefs seem not strictly limited to what was asked for, it  
22 might be challenging to reply to all of them in 10 pages.

23          HEARING OFFICER DODUC: Anyone share that  
24 concern? Mr. O'Laughlin?

25          MR. O'LAUGHLIN: No, I don't share that concern

1 at all, sorry. I had another question.

2 HEARING OFFICER DODUC: Hold on to that thought,  
3 then.

4 MR. O'LAUGHLIN: All right.

5 HEARING OFFICER DODUC: Ms. Morris?

6 MS. MORRIS: The legal briefs that were submitted  
7 cover a wide range of issues and we're going to attempt to  
8 reply to all of them in the 10 pages, but I do share the  
9 concern raised by the Department.

10 HEARING OFFICER DODUC: Anyone sharing the  
11 Department's concern?

12 MR. TAURIAINEN: Yeah, the Prosecution Team  
13 shares that concern. To the extent that the Pre-Hearing  
14 Briefs, of the legal issues that you directed in the Byron  
15 Bethany matter address those issues, perhaps 10 pages would  
16 be appropriate. But the briefs go beyond that. In some  
17 cases are fully unresponsive to the --

18 HEARING OFFICER DODUC: I don't need you to get  
19 into that, thank you.

20 All right, we will take those concerns under  
21 consideration.

22 Mr. O'Laughlin?

23 MR. O'LAUGHLIN: I was wondering if in regards to  
24 the issue in Phase I, are you going to set aside times for  
25 directed verdicts or non-suits at the end of the

1 presentation of the Prosecution Team's Case in Chief?

2 HEARING OFFICER DODUC: I'm sorry, now what?

3 MR. O'LAUGHLIN: Motions for non-suit or directed  
4 verdict after the time that the Prosecution Team has made  
5 their Case in Chief?

6 HEARING OFFICER DODUC: Go ahead.

7 MR. O'LAUGHLIN: Well, so normally -- kind of  
8 it's a little bit different here and I realize that, having  
9 practiced in front of you for some time. But in regards to  
10 this case there's the motions that you already have in  
11 front of you, and then there's questions that will be  
12 presented in the case that have more of a factual nature.

13 And so it's going to be interesting, once the  
14 Prosecution Team gets done, I can well imagine that parties  
15 or entities would move for non-suit or for a directed  
16 verdict that the Prosecution Team has not met its burden in  
17 regards to moving forward.

18 And I was just wondering if you were going to set  
19 aside or allow the parties time to make such motions to the  
20 Hearing Team.

21 HEARING OFFICER DODUC: I'll take your request  
22 under advisement and we will include that in a letter that  
23 will be issued following today's Pre-Hearing Conference.

24 Yes?

25 MR. VERGARA: One more question about this

1 briefing issue. I'm a little unclear about nomenclature  
2 because I've heard several --

3 HEARING OFFICER DODUC: You're unclear? I'm not  
4 even an attorney.

5 MR. VERGARA: Yeah. Well, I'm unclear because in  
6 my world what I think are oppositions are being referred to  
7 as replies. I'm talking about, you know, BBID has filed a  
8 brief that raises a number of procedural issues.

9 Normally, in a civil proceeding, we would be  
10 confronted with oppositions. I believe that's being  
11 referred to as replies, if I'm correct.

12 HEARING OFFICER DODUC: That's correct.

13 MR. VERGARA: What I'd like to know, in view of  
14 the fact that I understand we're going to be facing a  
15 number of these replies, will we will be given an  
16 opportunity to file what we would call a reply --

17 HEARING OFFICER DODUC: No.

18 MR. VERGARA: All right.

19 HEARING OFFICER DODUC: All right, not seeing any  
20 other hand, I will thank you all, again. A very fine start  
21 to my New Year. And like I say, we will provide a letter  
22 regarding the matters we discussed today.

23 We expect that letter to go out, Ms. Kuenzi, this  
24 week?

25 MS. KUENZI: Yes, this week.

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HEARING OFFICER DODUC: All right. That's it.  
Thank you very much. You are dismissed and we're  
adjourned. Go enjoy your year.

(Off the record at 9:42 a.m.)

**REPORTER'S CERTIFICATE**

I do hereby certify that the testimony in the foregoing hearing was taken at the time and place therein stated; that the testimony of said witnesses were reported by me, a certified electronic court reporter and a disinterested person, and was under my supervision thereafter transcribed into typewriting.

And I further certify that I am not of counsel or attorney for either or any of the parties to said hearing nor in any way interested in the outcome of the cause named in said caption.

IN WITNESS WHEREOF, I have hereunto set my hand this 24th day of February, 2016.



PETER PETTY  
CER\*\*D-493  
Notary Public

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I do hereby certify that the testimony in the foregoing hearing was taken at the time and place therein stated; that the testimony of said witnesses were transcribed by me, a certified transcriber.

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IN WITNESS WHEREOF, I have hereunto set my hand this 24th day of February, 2016.



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Barbara Little  
Certified Transcriber  
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