

**DEPARTMENT OF WATER RESOURCES**

1416 NINTH STREET, P.O. BOX 942836  
SACRAMENTO, CA 94236-0001  
(916) 653-5791



September 23, 2015

VIA E-MAIL

Division of Water Rights  
State Water Resources Control Board  
Attention: Jane Farwell-Jensen  
P.O. Box 2000  
Sacramento, California 95812-2000

Re: Pre-Hearing Conference in the Matter of Alleged Unauthorized Diversion by  
Byron-Bethany Irrigation District

Dear Ms. Farwell-Jensen:

This is in reply to the State Water Resources Control Board (Board) letter of September 11, 2015, regarding the Pre-Hearing Conference in the Matter of Alleged Unauthorized Diversion by Byron-Bethany Irrigation District (BBID). Hearing Officer Tam Doduc invited the parties to comment on the requests for postponement by BBID, Central Delta Water Agency, and South Delta Water Agency (Agencies). The Agencies requested that the hearing on the Board's Administrative Civil Liability complaint against BBID (ENF01951) be stayed or postponed due to pending litigation in Santa Clara County Superior Court, Case No. 1-15-CV-285182 (Curtailment Cases), and to allow additional time for discovery and preparation of testimony. The California Department of Water Resources (DWR) submits the following comments. Although there are many arguments for proceeding with the hearing prior to the Curtailment Cases and there is no legal basis for staying or postponing the hearing, DWR does not oppose the requests that the hearing be delayed in order to allow for sufficient discovery. DWR does, however, oppose any request to postpone the hearing pending the conclusion of the Curtailment Cases.

There is no need to have a lengthy delay, because the scope of the hearing is limited and should not be enlarged. The purpose of the hearing is for the Board to receive evidence relevant to determining: (1) whether BBID engaged in the unauthorized diversion of water; (2) whether to impose administrative civil liability against BBID for the alleged unauthorized diversions; and (3) whether to impose administrative civil liability in the amount of \$1,553,250 or some other amount. The Agencies propose, instead, to have the Board decide broader issues, including water quality, priority of rights, and Delta hydrodynamics, which will include not only the presentation of technical evidence, but also depositions of Board employees and others. This would enlarge the scope of the hearing beyond what is appropriate for a hearing on an Administrative Civil Liability Complaint against one party.

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Although the Board is not required to stay or delay the hearing and many arguments support proceeding with the hearing before the substantive issues are heard in the Curtailment Cases, DWR does not oppose the requests that the hearing be delayed for a reasonable, but limited, period of time in order to allow for sufficient discovery. However, DWR opposes postponing the hearing pending resolution of the Curtailment Cases. If you have any questions or need additional information, please contact me at (916) 657-5400 or robin.mcginnis@water.ca.gov. Thank you.

Sincerely,

A handwritten signature in blue ink, appearing to read "Robin McGinnis".

Robin McGinnis, Attorney  
Office of the Chief Counsel  
Department of Water Resources

cc: Attached Service List (via e-mail)

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

<p><b>Division of Water Rights</b>  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><b>Byron Bethany Irrigation District</b>  Daniel Kelly  Somach Simmons &amp; Dunn  500 Capitol Mall, Suite 1000  Sacramento, CA 95814  dkelly@somachlaw.com</p>
<p><b>Patterson Irrigation District</b>  Banta-Carbona Irrigation District  The West Side Irrigation District  Jeanne M. Zolezzi  Herum\Crabtree\Suntag  5757 Pacific Ave., Suite 222  Stockton, CA 95207  jzolezzi@herumcrabtree.com</p>	<p><b>City and County of San Francisco</b>  Johnathan Knapp  Office of the City Attorney  1390 Market Street, Suite 418  San Francisco, CA 94102  jonathan.knapp@sfgov.org</p>
<p><b>Central Delta Water Agency</b>  Jennifer Spaletta  Spaletta Law PC  PO Box 2660  Lodi, CA 95241  jennifer@spalettalaw.com</p> <p>Dante Nomellini and Dante Nomellini, Jr.  Nomellini, Grilli &amp; McDaniel  ngmplcs@pacbell.net  dantejr@pacbell.net</p>	<p><b>Richard Morat</b>  2821 Berkshire Way  Sacramento, CA 95864  rjmorat@gmail.com</p>
<p><b>San Joaquin Tributaries Authority</b>  Valerie Kincaid  O'Laughlin &amp; Paris LLP  2617 K Street, Suite 100  Sacramento, CA 95814  vkincaid@olaughlinparis.com</p>	<p><b>South Delta Water Agency</b>  John Herrick, Esq.  4255 Pacific Ave., Suite 2  Stockton, CA 95207  jherrlaw@aol.com</p>
<p><b>State Water Contractors</b>  Stefani Morris, Attorney  1121 L Street, Suite 1050  Sacramento, CA 95814  smorris@swc.org</p>	