

STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD
DIVISION OF WATER RIGHTS

IN THE MATTER OF:
WHETHER TO ISSUE A CEASE & DESIST ORDER
AGAINST WEST SIDE IRRIGATION DISTRICT (WSID)
OLD RIVER TRIBUTARY TO SAN JOAQUIN RIVER
SAN JOAQUIN COUNTY

-----/

PRE-HEARING CONFERENCE
MONDAY, OCTOBER 19, 2015
9:00 A.M.

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JOE SERNA JR.-CALEPA BUILDING
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SACRAMENTO, CALIFORNIA

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

2 OCTOBER 19, 2015

9:00 A.M.

3 HEARING OFFICER SPIVY-WEBER: Okay, we're
4 going to start without Jeane, and I'll introduce her
5 in absentia.

6 This is the opening pre-hearing conference
7 for the West Side Irrigation District's Draft Cease
8 and Desist Order. Good morning and welcome to the
9 pre-hearing conference regarding the public hearing
10 to be held to receive evidence relevant to
11 determining whether to adopt with or without
12 revision the July 16, 2015 Draft Cease and Desist
13 Order against the West Side Irrigation District.

14 I'm State Water Resources Control Board
15 Vice-Chair Frances Spivy-Weber. Also present with me
16 are Staff Counsel Nicole Kuenzi and Staff Engineer
17 Ernie Mona. And eventually we will have Jean McCue,
18 also a staff engineer.

19 Also present is Michael Buckman over here,
20 Chief of the Hearings Unit. And are you going to
21 stay with us the whole time? Yes.

22 Here comes Jeane.

23 Please look around and identify the exit
24 signs, the ones closest to you. In the event of a
25 fire alarm we must evacuate this room immediately.

1 Please take your valuables with you and walk down
2 the stairs, no elevators. Our relocation place is
3 across, catty-corner across the street at Cesar
4 Chavez Park. If you cannot use the stairs you will
5 be directed to a protected vestibule inside a
6 stairwell. I don't know where that is, so someone
7 needs to help me figure that one out if anyone is so
8 in need.

9 Please turn off your cell phones, put
10 things on mute, so we can have as little disturbance
11 as possible.

12 This pre-hearing conference is being held
13 in accordance with the Notice of Public Hearing and
14 Pre-Hearing Conference dated September 1st, 2015,
15 and my letter to the parties of October 8, 2015.

16 The goal of this pre-hearing conference is
17 to ensure that hearing proceeds in an orderly and
18 expeditious -- underline expeditious -- manner. I'm
19 particularly interested in hearing from you
20 regarding procedural matters that will further this
21 goal.

22 The pre-hearing conference is being webcast
23 on the Internet, and both audio and video are being
24 recorded.

25 We do not have a court reporter present

1 today but will for the hearing, so there will be no
2 transcript.

3 We'll begin with a roll call of the
4 parties. As I identify each party who has filed a
5 Notice of Intent to Appear, speak into the
6 microphone and state your name.

7 We'll start with the Division of Water
8 Rights prosecution team.

9 MR. TAURIAINEN: Andrew Tauriainen, Office
10 of Enforcement.

11 HEARING OFFICER SPIVY-WEBER: Anyone else?

12 MR. TAURIAINEN: With me to my right is
13 John Prager also of the Office of Enforcement.

14 HEARING OFFICER SPIVY-WEBER: The West Side
15 Irrigation District.

16 MS. ZOLEZZI: Good morning. Jeanne Zolezzi,
17 General Counsel for The West Side Irrigation
18 District. Also with me is my associate, Janelle
19 Krattiger.

20 HEARING OFFICER SPIVY-WEBER: California
21 Department of Water Resources.

22 MS. MCGINNIS: Robin McGinnis --

23 HEARING OFFICER SPIVY-WEBER: Oh, there you
24 are.

25 MS. MCGINNIS: -- Chief Counsel.

1 HEARING OFFICER SPIVY-WEBER: Okay. South
2 Delta Water Agency.

3 MR. RUIZ: (inaudible)

4 HEARING OFFICER SPIVY-WEBER: Okay. Is John
5 part of your group?

6 MR. RUIZ: (inaudible)

7 HEARING OFFICER SPIVY-WEBER: Problems, I
8 guess. Okay.

9 Central Delta Water Agency.

10 MS. SPALETTA: Jennifer Spaletta on behalf
11 of Central Delta Water Agency.

12 HEARING OFFICER SPIVY-WEBER: Byron-Bethany
13 Irrigation District.

14 MR. KELLY: Good morning. Daniel Kelly,
15 General Counsel, Byron-Bethany Irrigation District.

16 HEARING OFFICER SPIVY-WEBER: San Joaquin
17 Tributaries Authority.

18 MS. KINCAID: Good morning. Valerie Kincaid
19 and Timothy Wasiewski for San Joaquin Tributaries
20 Authority.

21 HEARING OFFICER SPIVY-WEBER: The State
22 Water Contractors.

23 MS. MORRIS: Stefanie Morris, General
24 Counsel, State Water Contractors.

25 HEARING OFFICER SPIVY-WEBER: The City and

1 County of San Francisco.

2 MR. KNAPP: Good morning. Jonathan Knapp on
3 behalf of the City and County of San Francisco, and
4 I'm also here with Robert Donlan, outside counsel
5 for City and County of San Francisco.

6 HEARING OFFICER SPIVY-WEBER: And finally,
7 Westlands Water District.

8 MS. AKROYD: Good morning. Rebecca Akroyd
9 and Phil Williams for Westlands Water District.

10 HEARING OFFICER SPIVY-WEBER: Have I
11 covered everyone? Now we can begin.

12 As set forth in the September 1, 2015,
13 Notice, the hearing in this matter is currently
14 scheduled for November 12, 2015, and continuing, if
15 necessary, November 13 and 16.

16 West Side Irrigation District, Central
17 Delta Water Agency, South Delta Water Agency, and
18 prosecution team requested that this hearing date be
19 postponed. In my October 8, 2015 letter I informed
20 the parties that the prompt consideration of the
21 proposed Cease and Desist Order is of significant
22 interest to the Board given the severity of the
23 current drought and the possibility of recurrence of
24 the allegedly unauthorized diversions.

25 However, I also informed the parties that I

1 will consider requests for postponement if alternate
2 timely dates for the hearing are selected. I
3 directed the parties to identify and submit to me
4 any conflicts that would prevent their participation
5 in the hearing during the week of January the 11th
6 through January 15.

7 The only party who identified a possible
8 conflict was the Department of Water Resources, who
9 also indicated that this conflict could be
10 rescheduled if necessary.

11 So does anyone have any comments,
12 additional comments, on their availability during
13 that week of January 11 through 15, 2016? And you
14 can reschedule?

15 MS. MCGINNIS: That's right.

16 HEARING OFFICER SPIVY-WEBER: Okay. Now, a
17 preliminary issue to be addressed is the prosecution
18 team's motion for protective orders. The prosecution
19 team requests that I issue protective orders that
20 require all parties to coordinate any discovery
21 requests in order to avoid duplicative or overly
22 burdensome requests, so they ask that everything be
23 coordinated in terms of discovery.

24 Prohibit the parties from conducting
25 depositions on prosecution team witnesses prior to

1 the evidence and witness statement submittal
2 deadlines. And prohibit the parties from serving
3 discovery requests seeking witness statements prior
4 to the evidence and witness statement submittal
5 deadlines.

6 Although I will not rule today on the
7 prosecution team's motion at this time, I do want to
8 hear from everyone about this because it's a
9 substantial request that would probably entail some
10 delays, further delays. Well, let's just hear from
11 folks.

12 First of all, the prosecution team, do you
13 want to go into more detail?

14 Yes?

15 MS. ZOLEZZI: Madam Hearing Officer, are we
16 going to spend more time on the possible dates for
17 the hearing?

18 HEARING OFFICER SPIVY-WEBER: Well, he's
19 suggesting some other dates.

20 MS. ZOLEZZI: Yes, and we'd like to be
21 heard on the timing. I don't know when you want to
22 do that.

23 HEARING OFFICER SPIVY-WEBER: Well, that's
24 going to be part of this second piece in terms of
25 coordination.

1 MS. ZOLEZZI: Okay.

2 HEARING OFFICER SPIVY-WEBER: So, yes. I
3 mean, the answer is yes and no. We got everyone's
4 letters in about their availability in January. Now
5 we've moving on to additional requests from the
6 prosecution team and that discussion will have an
7 effect on what we do.

8 Go ahead.

9 MR. TAURIAINEN: The prosecution team's
10 request for a protective order is related to
11 Friday's request for aligning the submittal
12 deadlines with this case and with the Byron-Bethany
13 Irrigation District case.

14 And what it really boils down to, it's all
15 the same parties seeking to adjudicate really the
16 core issue or issues with some variance between the
17 West Side case and Byron-Bethany's case. This is all
18 in my briefs, but it creates a burden on the
19 prosecution to even have to go through multiple
20 rounds of discovery, and the parties are eager to
21 have discovery right away.

22 In addition, I suspect it will create
23 administrative record problems if we don't try and
24 have some coordination between the two cases, and in
25 particular the evidentiary submittal deadlines for

1 the two cases.

2 That being said, the West Side matter, the
3 prosecution team feels it probably should go first.
4 It's an injunctive order. It's important to have
5 timely hearings on injunctive orders.

6 It also, with respect to the core issues of
7 the case, with regard to the water availability at
8 least, presents probably a cleaner question because
9 it's a post 1914 right.

10 So to that end, if need be, there can be a
11 rescheduling to allow this hearing, the West Side
12 hearing to go before the other, that would probably
13 be to everyone's benefit and certainly what I would
14 recommend.

15 HEARING OFFICER SPIVY-WEBER: You really
16 think that we're going to have availability from
17 everyone in February? I don't know.

18 Anyway, I am interested in what others have
19 to say. Let's start with the West Side.

20 MS. ZOLEZZI: Thank you. We have no
21 objection in general to the request to try to
22 coordinate discovery and coordinate the deadlines in
23 the hearings; that does make sense. That's about all
24 we're in agreement with, however.

25 Two issues. The first is the timing of the

1 hearing. We do agree that it should be postponed, we
2 do agree with the prosecution team that somewhere
3 around the BBID hearing would be ideal.

4 And just generally by way of background,
5 the West Side Irrigation District is not delaying
6 for sake of delay. We are very eager to get this
7 heard. We need it answered as much as the State
8 Board does for what we do next year.

9 However, it is dealing with real property
10 rights held by the District and in turn its
11 landowners. These are very important rights and we
12 have to make sure we get it right. We have to make
13 sure that we have an opportunity to get to all of
14 the evidence so that we can protect our rights and
15 have our due process that we're entitled to.

16 So having said that, even scheduling the
17 hearing in January simply does not give us enough
18 time even if we start discovery immediately, which
19 we're having trouble doing because of the protective
20 orders.

21 There are at least thirteen witnesses that
22 the parties have labeled to be giving testimony
23 here. If we depose one a week starting now, which
24 we're not being able to, we wouldn't finish in time
25 for the January hearing, let alone have time to

1 prepare our experts in response to that discovery.

2 In addition, the prosecution team has
3 turned over to us over three gigabytes of
4 information just last week for our Public Records
5 Act request, and that is not all of the information.
6 We still have information to be provided in response
7 to that request that we don't know when it's going
8 to come. There is more information from the
9 prosecution team and there is information coming
10 from the Office of Chief Counsel. We have asked when
11 that might be and we haven't gotten a response. So
12 we have to get through that information, our experts
13 have to get through that information.

14 So having said that, we do support the
15 proposal by the prosecution team to move the hearing
16 as close as possible to the BBID hearing, whether it
17 be before or after that hearing in March, I think,
18 will give us enough time if we move promptly and
19 quickly, so we do support that.

20 Turning to the protective order. A
21 protective order to force the parties to coordinate
22 is really not needed. We have done that. We are
23 coordinating with all the parties. We have checked
24 dates with all of the parties to move forward with
25 these depositions and intend to continue to do that.

1 It doesn't make any sense to have multiple
2 depositions of the same party. So that is something
3 that we've already agreed to.

4 We haven't had a chance to respond to the
5 protective order and we will submit something in
6 writing, but just to make a point.

7 The protective order asks for discovery not
8 to be able to take place until the witness
9 statements are submitted. That raises a serious
10 Catch 22 item. We have no problem waiting until the
11 prosecution team submits its witness statements if
12 that is done promptly and we are given enough time
13 to do discovery afterwards.

14 The problem is we cannot make our witness
15 statements until discovery is over, because until we
16 have a chance to see all of the evidence, we can't
17 make witness statements. So we definitely have a
18 Catch 22, chicken-and-egg problem, whatever you want
19 to see.

20 The only way around that would be to have
21 preliminary witness statements, then do discovery,
22 and then have final witness statements. That doesn't
23 seem to be streamlining the process, as you have
24 recommended.

25 So discovery simply does need to take place

1 immediately so that we can get it completed and then
2 present to you concise witness statements. The only
3 way we are going to be able to streamline this
4 process is to do discovery and find out who is going
5 to testify to what, so we would request that we be
6 allowed to proceed, but we will be submitting
7 written comments as well. Thank you.

8 HEARING OFFICER SPIVY-WEBER: You had a
9 comment?

10 MR. TAURIAINEN: Yeah, if I may. It sounds
11 like the District's counsel is really describing the
12 process for developing rebuttal testimony, which the
13 Byron-Bethany process has built in. There's actually
14 two submittal dates separated by four weeks and the
15 second submittal date is four weeks ahead of the
16 hearing, so there's likely ample time to review
17 witness statements and then prepare rebuttal witness
18 statements before that.

19 HEARING OFFICER SPIVY-WEBER: Thank you.

20 MS. ZOLEZZI: May I just respond? That is
21 simply not the case, and I think you need to look at
22 the purpose of discovery and the assumption that the
23 prosecution team is making that we have seen time
24 and time again in the letters and the statements
25 that the prosecution team has made.

1 The prosecution team seems to believe that
2 when they put out the draft Cease and Desist Order,
3 that is all the evidence that we are entitled to.
4 And they say that all the evidence they have used to
5 put that together and issue the curtailments is on
6 the website.

7 That's simply not the way this works. That
8 is their proposed evidence. We are entitled to
9 investigate that evidence and depose people as to
10 how they made that decision and why they used that
11 information that they have disclosed as opposed to
12 other information.

13 That is not rebuttal. That is putting
14 together our defense.

15 HEARING OFFICER SPIVY-WEBER: Thank you.

16 MS. KUENZI: I just have a very quick
17 question, if I may. I wanted to clarify, I think in
18 the motion for protective order there was a
19 description that there may be a request for
20 discovery before the exhibit submittal deadline and
21 also after, and then I think I heard you mention
22 that one deposition of each party makes sense, and
23 this may be in your response to the motion, but I
24 wondered if you would clarify whether you would be
25 looking for depositions both before the submittal

1 deadline and if you were able to obtain that you
2 would also be looking to depose these same witnesses
3 after the submittal deadline.

4 MS. ZOLEZZI: I will just give the West
5 Side's approach. I'm sure the other parties have
6 comments as well.

7 But our key is just to get to depose all of
8 these people. The only reason we were proposing
9 before and after is because we can't finish them all
10 before, so we have to continue after.

11 It is not our intent, if this is what
12 you're getting at, to depose everyone before the
13 witness statements, then the witness statements come
14 out, and then depose them again. Unless something
15 comes out in the witness statements that is new or
16 surprising, I don't believe we would wish to do
17 that.

18 If, of course, there is something new that
19 we hadn't seen, we would ask to depose on that very
20 limited issue.

21 HEARING OFFICER SPIVY-WEBER: Okay. Let's
22 hear from the California Department of Water
23 Resources.

24 MS. MCGINNIS: Thank you, Hearing Officer
25 Spivy-Weber. DWR agrees that having depositions

1 before and after the written testimony is due is
2 burdensome, so we agree that depositions should
3 happen after the written testimony has been
4 submitted, because otherwise it is, you know, the
5 different rounds of discovery is analogous to what's
6 going to happen at the hearing, which is the written
7 testimony, cross, and rebuttal.

8 And given the limited scope of the hearings
9 and that this is an administrative action subject to
10 later review, we agree that, you know, keeping
11 discovery limited and streamlined is a good idea.

12 And also that document requests as they
13 come in, we can respond to starting, you know,
14 before the hearing and written testimony are due.

15 HEARING OFFICER SPIVY-WEBER: Central Delta
16 Water Agency?

17 MS. SPALETTA: Thank you. We would agree
18 that the depositions should take place before the
19 witness statements for a couple of reasons.

20 Number one is timing. I actually counted
21 eighteen separate witnesses that have been
22 identified by the parties, and so there's the issue
23 of how much time it takes to do a proper deposition.

24 But in our eyes the fundamental issue is
25 the ability to streamline the hearing and obtain

1 stipulations. If we are taking depositions after
2 witness statements and trying to squeeze that in as
3 well as preparation of rebuttal testimony, I can
4 almost guarantee there will be no stipulations.

5 If we take the depositions early, all of
6 the parties will have a chance to understand the
7 information and the analysis that the State Board
8 performed, which substantially increases the
9 likelihood of stipulations on as many issues as
10 possible, so that when witness statements and
11 exhibits are submitted, they are as limited as they
12 need to be to address only those issues that are in
13 dispute.

14 You often hear people say, "I don't ships
15 passing in the night," and I don't think that's what
16 the hearing team wants. You don't want everyone to
17 submit their exhibits and witness statements and
18 have ships passing in the night. What would be
19 preferable is to have ample time for everyone to
20 understand and see the same information so that the
21 parties can work on stipulations for what is not in
22 dispute and focus their submittal of exhibits and
23 witnesses statements on only those issues that are
24 in dispute, which also helps narrow the scope of
25 rebuttal and narrow the time of the hearing.

1 So for practical purposes I think it's very
2 important that we start the depositions as soon as
3 possible, because the State Board has completed this
4 analysis, it's not like their working on something.
5 They completed the analysis in order to send out the
6 CDO, so we're not imposing on them additional work;
7 the work has been done. We're just asking to learn
8 what the work was and the rationale behind the
9 analysis earlier so that we can do a better job
10 collectively preparing the presentation for the
11 hearing team.

12 HEARING OFFICER SPIVY-WEBER: Thank you.

13 Byron-Bethany?

14 MR. KELLY: Yes, Hearing Officer Spivy-
15 Weber, thank you. A couple things.

16 Number one. You know, I keep hearing people
17 mention the Byron-Bethany A.C.L. proceeding. It's
18 important that we not conflate these proceedings.
19 This hearing was not noticed to include any
20 discussion of the Byron-Bethany hearing and so I --
21 you know, the hearing team is the same, but the two
22 hearings cannot bleed together, certainly not at
23 this point.

24 And we will be filing oppositions to the
25 motions for protective order probably in both cases,

1 and so I'm hesitant to start arguing about that now
2 when we haven't had an opportunity to actually
3 finish our research and then submit oppositions,
4 which we will be doing. So what I'm going to say now
5 is premised on the fact that we're going to still be
6 submitting oppositions.

7 I agree that in this case people need to be
8 able to conduct discovery prior to witness
9 statements and exhibits being submitted. The reality
10 is, because a lot of what went on, the parties, some
11 of the water user parties need to be able to
12 understand what happened at the State Water Board in
13 order to prepare their case in chief testimony. And
14 it may be that some of the testimony that we receive
15 during depositions will be part of the case in chief
16 testimony that gets submitted whenever it's due.

17 The prosecution team has argued, and we've
18 heard time and time again how rebuttal testimony
19 needs to be really limited to true rebuttal
20 testimony. Well, if we're not entitled to conduct
21 discovery until after witness statements are due, I
22 have no idea what the prosecution team is going to
23 put in their direct testimony. And then how do I
24 know how to anticipate whether or not I needed to
25 actually then raise something in my case in chief

1 versus save it for rebuttal when it might not truly
2 be rebuttal?

3 And so we can't be caught in that kind of
4 circumstance where the prosecution team puts
5 together a very narrow package of testimony that
6 would preclude some relevant information from being
7 introduced as rebuttal testimony, because it might
8 not truly be rebuttal to what was offered by the
9 prosecution team.

10 So in order for the parties to adequately
11 prepare for the hearing and adequately prepare to be
12 able to submit written testimony, that discovery has
13 to happen before written testimony gets submitted.

14 HEARING OFFICER SPIVY-WEBER: San Joaquin
15 Tributaries Authority.

16 MS. KINCAID: Thank you. Valerie Kincaid
17 for the San Joaquin Tributaries Authority. The SJTA
18 agrees that people are coordinating and certainly
19 these issues need to be coordinated. It doesn't make
20 any sense to depose and redepose parties.

21 Other than that, however, the SJTA has some
22 issues with the prosecution team's protective order,
23 two main issues.

24 One has been spoken about already, but I'll
25 just tell you the SJTA perspective of presenting

1 evidence and testimony. We are obviously not a
2 direct party to either of these matters and we have
3 named witnesses that will talk specifically about
4 the water availability piece of this puzzle. And
5 whether we actually call those witnesses or not will
6 depend on depositions and information coming out of
7 it.

8 So the Catch 22 that Ms. Zolezzi spoke
9 about is really very critical for us. We don't
10 actually know if we're going to call the witnesses,
11 depending on what happens in the depositions, so we
12 actually cannot provide a statement at the same time
13 that the prosecution team's witnesses provide
14 statements because our statements will literally be
15 crafted in response to what they are saying, so we
16 are unable to provide you a witness statement before
17 we depose and see those first, so we have a real
18 timing issue.

19 And it kind of goes to the streamlining
20 issues as well. I would like to call fewer witnesses
21 than multiple. If we don't have to call all of our
22 witnesses because we hear testimony that's very
23 clear on an issue from the prosecution team, then we
24 would not have to bring everyone in. So for us we
25 really need to have those depositions happen before

1 we submit our witness statement.

2 The second issue that I'd like to note, and
3 again, SJTA may also respond in writing to the
4 protective order, but the issue of non-prosecution
5 team witnesses should certainly be considered as
6 well. I know my understanding from my first reading
7 of the protective order is that that pertains to
8 prosecution team witnesses.

9 For folks who are not doing a witness
10 statement because they are not being called by the
11 hearing team or the prosecution team but we would
12 like to call them, I have no idea what that means,
13 when I can depose them. They're not going to do a
14 witness statement. So if I want to depose someone
15 like John O'Hagan, who is not named by anyone, I
16 don't know when I can do that and how I can do it,
17 and that's certainly something that needs to be
18 resolved. We will discuss this in probably a written
19 response to the protective order, but it should be
20 on the minds of everyone here that this is just a
21 prosecution team witness issue and there are
22 observed people who are going to be involved in this
23 and will be witnesses that are not called by the
24 prosecution team, so we should think about that as
25 well. Thank you.

1 HEARING OFFICER SPIVY-WEBER: Thank you.
2 State Water Contractors.

3 MS. MORRIS: Thank you. State Water
4 Contractors really doesn't take a side on this
5 issue. We really are here limited to the issue of
6 protecting stored water. We probably wouldn't
7 normally be participating in a CDO proceeding like
8 this except for the fact that the parties have
9 raised potential defenses regarding water supply
10 availability that implicate protection of our stored
11 water. So I have no opinion on this specific
12 procedural issue.

13 HEARING OFFICER SPIVY-WEBER: City and
14 County of San Francisco.

15 MR. KNAPP: Jonathan Knapp for the City and
16 County of San Francisco. San Francisco has no
17 objection to coordinating discovery and coordinating
18 the deadlines between the proceedings. And others
19 have noted, we agree that that's already been
20 occurring.

21 We also agree that the hearing should be
22 postponed similar as the Byron-Bethany Irrigation
23 District enforcement proceeding, as the hearing was
24 postponed in that proceeding.

25 And with regard to the issue of the

1 protective order, San Francisco agrees with many of
2 the sentiments that have been expressed, and
3 specifically agrees with the statements that were
4 just made by Valerie Kincaid of the SJTA in terms of
5 being in a difficult position to be able to respond
6 when we don't have the full picture of what the
7 State Board is relying upon.

8 HEARING OFFICER SPIVY-WEBER: And finally,
9 Westlands Water District.

10 MR. WILLIAMS: Good morning, Madam Vice-
11 Chair. Phil Williams with Westlands [skip] -- City
12 and County of San Francisco, we're here for limited
13 purposes, but would emphasize how imperative it is
14 that all parties are afforded full opportunity
15 regarding timing and procedural matters to make sure
16 they're able to put on their full case.

17 In the event that depositions preceding
18 witness statements somehow mitigate or militate
19 against their efficacy, Westlands would argue that
20 it's in everyone's best interest to assure that
21 timing is right both in terms of when the hearing is
22 held, so aligning that with BBID, but also in terms
23 of protective orders, in terms of when parties may
24 be able to present their full case, that all parties
25 are afforded ample opportunity.

1 We don't have a specific position there,
2 but would emphasize that timing is very important
3 here, and allowing parties a full opportunity to
4 fully present their case will probably result in a
5 more durable solution. Thank you.

6 MR. BUCKMAN: I think we skipped South
7 Delta.

8 HEARING OFFICER SPIVY-WEBER: Did I? Oh, I
9 did. Well, I kept looking at you. I'm so sorry.

10 MR. RUIZ: Good morning. [microphone
11 malfunction] Sorry about that.

12 MS. KUENZI: A very quick request to the
13 parties. I understand based on prosecution team
14 submittals that there may be subpoenas for
15 depositions floating around there, and it's possible
16 they have not yet matriculated to my desk, but I
17 haven't seen them, we haven't seen them. If you can
18 please just make sure a member of the hearing team
19 or all of us are copied by email, that would be very
20 helpful so we know what the status are, especially
21 when we get motions based on those subpoenas.

22 FEMALE VOICE: Mr. Ruiz, you should
23 probably repeat yourself summarily just so we have
24 it for the video recording.

25 MR. RUIZ: I'll be quick. I would just say

1 again, the South Delta Water Agency feels that
2 depositions need to occur prior to the deadline for
3 the submittal and the case in chief, and that in
4 order for the hearing to be as expeditious as
5 possible, the case in chief needs to be prepared
6 adequately and it can't be prepared adequately
7 without the ability to depose these witnesses in
8 advance. Thank you.

9 MR. KELLY: If I may, Hearing Officer
10 Spivy-Weber, and I guess for the hearing team.
11 Typically, in litigation and adjudicative
12 proceedings the adjudicator is not copied on
13 anything related to discovery unless there's a
14 dispute, so deposition notices, subpoenas, written
15 discovery is not provided to the adjudicator. It's
16 something that the parties engage in, and if there's
17 a dispute or if somebody wants to introduce it, then
18 it's provided to the adjudicator.

19 And so in this proceeding is the hearing
20 team requested to be copied on all discovery
21 requests?

22 MS. KUENZI: I believe it's in our hearing
23 notice; I may stand corrected. But yes, I would
24 appreciate that. That would just be helpful. Thank
25 you.

1 HEARING OFFICER SPIVY-WEBER: All in the
2 spirit of it being expeditious, yes.

3 MS. SPALETTA: Can we clarify this point,
4 because Page 4 of the October 8th letter discusses
5 subpoenas, which I read to relate to subpoenaing a
6 witness to appear at a hearing as opposed to
7 prehearing discovery, so can we clarify this issue
8 just so we make sure that the parties do what the
9 hearing team is requesting.

10 MS. KUENZI: I think, just so that we're
11 all in the loop and know what's going on it would be
12 wonderful and I'm asking the parties to copy us on
13 all subpoenas both for depositions and for testimony
14 at the hearing itself. And I'm sorry if I didn't
15 answer the question.

16 MS. SPALETTA: Well, a subpoena is
17 typically required for a non-party witness, and a
18 deposition notice is used to take a deposition of a
19 party witness. So are you asking just to be copied
20 on subpoenas or are you asking to be copied on all
21 deposition notice, requests for production of
22 documents, everything under the Code of Civil
23 Procedure that's implicated by Water Code Section
24 1100?

25 MS. KUENZI: All discovery, please.

1 MS. SPALETTA: Okay.

2 HEARING OFFICER SPIVY-WEBER: And again,
3 this is so that we're all on the same page so when
4 we do start this we can move through and there are
5 no surprises. I mean, that's what you want, that's
6 what we want.

7 MS. KINCAID: Hearing Officer Spivy-Weber,
8 may I just ask one clarifying question about this
9 issue, and I don't want to belabor the point, but
10 this is so we make sure we're all on the same page,
11 it's not because a hearing officer or member will
12 attend a deposition, right? I want to make that
13 clear.

14 MS. KUENZI: That's correct. That's
15 correct. No, it's simply a matter so that when we
16 get motions the hearing team is at that time aware
17 of what requests are out there.

18 MS. ZOLEZZI: Hearing Officer, may I make
19 one comment about the whole discovery issue?

20 HEARING OFFICER SPIVY-WEBER: Yes.

21 MS. ZOLEZZI: For the record, I just wanted
22 to clarify one thing that was stated by the
23 Department of Water Resources, that somehow
24 distinguishes the way discovery should be undertaken
25 here because this is simply an administrative

1 proceeding which is subject to review.

2 And I would point out for the record again
3 to remind everyone that writ review of a decision
4 that is made by the State Water Resources Control
5 Board here is limited to the administrative record,
6 so this is our only opportunity to make that factual
7 record, which is why we're taking it very seriously,
8 because there will be judicial review here and we
9 want to have a record that can be reviewed. Thank
10 you.

11 HEARING OFFICER SPIVY-WEBER: Okay. Now, I
12 have taken this in, so has our team, and we will be
13 getting back to you as quickly as possible as to
14 exactly how to proceed, because it's we definitely
15 want to make sure there's time, but we also want to
16 make sure we move expeditiously.

17 MS. ZOLEZZI: Would it be prudent, Hearing
18 Officer, to make a deadline for when the parties can
19 respond in writing?

20 MS. KUENZI: I think it would be a good
21 idea.

22 HEARING OFFICER SPIVY-WEBER: I agree.

23 MS. KUENZI: So that the parties know how
24 long they have to respond to the motion.

25 HEARING OFFICER SPIVY-WEBER: Right. This

1 is Monday the 19th.

2 MS. KUENZI: Two weeks would be standard.

3 MR. KELLY: Two weeks to respond to the
4 motion for protective order? I guess I say that
5 because I think that there's actually the first
6 deposition is scheduled within that two-week period.

7 MS. KUENZI: When is the first deposition
8 scheduled?

9 MR. KELLY: It is, I think October 26th.

10 MR. TAURIAINEN: Three are within the two-
11 week period.

12 MS. KUENZI: So that's next Monday. The
13 26th is a week from today.

14 MS. ZOLEZZI: So perhaps if we could get
15 our responses in Wednesday?

16 HEARING OFFICER SPIVY-WEBER: Let's go for
17 Wednesday.

18 MS. ZOLEZZI: It may be too much to ask
19 that you decide this week so maybe we could proceed,
20 but we could give it a shot.

21 HEARING OFFICER SPIVY-WEBER: Right. Okay.
22 Now, the deadline for submission of written
23 testimony and other exhibits. In the event that I
24 reschedule the hearing, I may also reschedule the
25 deadline for submission of exhibits -- so now we're

1 getting into the possible limits to delay -- to
2 allow time for the submittal of written rebuttal
3 testimony in advance of the hearing.

4 I'd like to hear from parties regarding
5 deadlines for the submission of exhibits and written
6 rebuttal testimony. Let's start with the prosecution
7 team.

8 MR. TAURIAINEN: Our request from Friday
9 the 16th.

10 HEARING OFFICER SPIVY-WEBER: Right.

11 MR. TAURIAINEN: The current deadline in
12 the Byron-Bethany matter is January --

13 HEARING OFFICER SPIVY-WEBER: January 18th.

14 MR. TAURIAINEN: -- January 18th for
15 initial submittals and then rebuttal on February
16 22nd.

17 HEARING OFFICER SPIVY-WEBER: 22nd? I had
18 written down 21st, so okay. So let's move to the
19 West Side Irrigation District.

20 MS. ZOLEZZI: Yes, that deadline, while
21 definitely better than what we have now, really
22 depends on when we can get the discovery scheduled.

23 HEARING OFFICER SPIVY-WEBER: DWR.

24 MS. MCGINNIS: Can you clarify the
25 question?

1 HEARING OFFICER SPIVY-WEBER: Do you have
2 specific deadlines to recommend for the submission
3 of exhibits and written rebuttal testimony?

4 MS. MCGINNIS: I don't have any specific
5 dates in mind or necessarily that they be
6 coordinated with deadlines of the Byron-Bethany
7 matter. Just that if the hearing is postponed that
8 the deadlines are all moved appropriately.

9 HEARING OFFICER SPIVY-WEBER: Okay. South
10 Delta. I won't forget you this time.

11 MR. RUIZ: Thank you. It's difficult to
12 make a definitive comment or have an opinion until
13 we know, frankly, what your rulings are on the
14 protective orders, but we would agree that the
15 hearing does need to be delayed and it should be
16 closer in time to the BBID hearing.

17 MR. BUCKMAN: Vice-Chair, if I can jump in
18 here. I think in general we're looking for an amount
19 of time, not necessarily specific dates. So if you
20 typically think that you need four weeks prior to
21 the hearing to prepare your exhibits, I think that
22 would be helpful. If we're going to do written
23 rebuttal, it would need to be some timeframe in
24 between the exhibits and the written rebuttal, if
25 you think that written rebuttal would be helpful.

1 So I think those are the things that we're
2 looking at, not specific dates, because right now we
3 don't have a specific hearing date in mind so, of
4 course, there wouldn't necessarily be a deadline
5 associated with that, but in general, amounts of
6 times that you need to prepare and whether you think
7 written rebuttal is going to be helpful or not and
8 the associated timeframe in between that, the
9 hearing, and the exhibit deadline. Thank you.

10 MR. RUIZ: I definitely think that written
11 rebuttal would be necessary and important. The
12 deadlines and the typical timeframes in between when
13 the witness statements are due relative to the
14 hearing and relative to rebuttal, not generally
15 opposed to that. But again, I'd have to look at it
16 further but it's going to have to depend on when
17 we're able to complete our discovery, frankly.

18 HEARING OFFICER SPIVY-WEBER: Does anyone
19 who's spoken earlier have anything about timeframe?
20 Okay.

21 MS. MCGINNIS: Yes, I would like to add I
22 believe written rebuttal would be helpful, and about
23 a month in between the submittal and the written
24 testimony and exhibits and the rebuttal would be
25 sufficient.

1 HEARING OFFICER SPIVY-WEBER: Okay.

2 MR. TAURIAINEN: Prosecution agrees with
3 that. That was implicit but not expressly stated in
4 my letter on Friday. But yeah, rebuttal is
5 definitely important. And of course, I believe
6 mitigates almost all of the concerns that the
7 parties have about discovery, and also about four
8 weeks in between. And then some time ahead of
9 hearing. It doesn't have to be four weeks, but...

10 HEARING OFFICER SPIVY-WEBER: Central Delta
11 Water Agency.

12 MS. SPALETTA: I agree with the timeframes
13 that have been expressed, about a month in between
14 the case in chief submittals and the rebuttal
15 submittals, and then at least three weeks between
16 rebuttal and hearing. I think that will help the
17 parties prepare for a more streamlined presentation
18 at hearing. But it does depend on when we can
19 complete discovery.

20 HEARING OFFICER SPIVY-WEBER: Okay. Byron-
21 Bethany.

22 MR. KELLY: Yes, thank you. I think I agree
23 with Central Delta, this all really depends on what
24 happens with the protective orders. If protective
25 orders are issued and folks aren't allowed to

1 conduct discovery until after the submittal of
2 direct testimony, it's going to require more than
3 four weeks for rebuttal, because we're going to have
4 to be able to actually schedule, take the
5 depositions, and then prepare rebuttal testimony
6 based on that discovery, and that won't happen
7 within four weeks.

8 If, on the other hand, the parties are
9 allowed to move with discovery now, I think that
10 schedule, the four week schedule between direct
11 testimony and rebuttal, and about a month between
12 rebuttal and the hearing are probably appropriate.

13 HEARING OFFICER SPIVY-WEBER: Earlier it
14 was three weeks.

15 MR. KELLY: Roughly, yes, three weeks.
16 Yeah, those timeframes are more reasonable if we're
17 able to do discovery prior to direct testimony.

18 HEARING OFFICER SPIVY-WEBER: Thank you.
19 San Joaquin Tributaries Authority.

20 MS. KINCAID: The SJTA agrees with what's
21 been said previously. The only thing that I would
22 add is that if the protective order decision
23 requires that depositions aren't to be taken until
24 after witness statements we will be making a request
25 that we stagger witness statements and that we can

1 submit ours later than the prosecution team. Again,
2 not frankly providing the most expeditious route
3 there, but we will probably have to do that and
4 request that we submit them later and after
5 discovery. For us the three to four week timeframe
6 once we get that all figured out is fine. Thank you.

7 HEARING OFFICER SPIVY-WEBER: State Water
8 Contractors.

9 MS. MORRIS: State Water Contractors are
10 fine submitting written rebuttal. In terms of the
11 timing of that, in other hearings it's often come
12 during hearing or after the hearing.

13 It's difficult for us, given the level of
14 participation we may or may not be doing here, based
15 on what we see coming in, to make any determination.
16 So if written rebuttal testimony is going to be
17 required, there needs to be sufficient time to look
18 at all the voluminous potential materials coming in
19 based on what I don't really understand the scope
20 and the magnitude of what discovery is going to be
21 occurring in this hearing.

22 And then finally, I'd just like to make a
23 point of clarification. You know, State Water
24 Contractors is a party. I have not been contacted,
25 to my knowledge, about depositions or coordinating

1 on scheduling of depositions. State Water
2 Contractors will be participating in those
3 depositions, at least monitoring them, so I'd make a
4 request that if parties are discussing that, include
5 all parties.

6 HEARING OFFICER SPIVY-WEBER: The City and
7 County of San Francisco.

8 MR. KNAPP: San Francisco agrees with the
9 timeframes that have been discussed, four weeks
10 between direct and rebuttal testimony seems
11 adequate, and three weeks between rebuttal testimony
12 and hearing seems fine.

13 I guess as a point of clarification with
14 regard if depositions do go forward, San Francisco
15 doesn't intend to issue any deposition notices at
16 this point, but we would like to be able to
17 participate and we wanted to clarify whether it
18 would be necessary for us to submit deposition
19 notices in order to do so.

20 MS. KUENZI: I wouldn't think so. I mean,
21 these deposition notices should be going to all of
22 the parties unless -- that would seem to be standard
23 practice, and then coordinate among yourselves.

24 MR. KNAPP: Thank you.

25 HEARING OFFICER SPIVY-WEBER: And finally,

1 unless I left someone out, Westlands Water District.

2 MS. AKROYD: Westlands would like to echo
3 the comments of State Water Contractors, both in
4 that we would request that written rebuttal
5 testimony be during or after the hearing so we'll
6 have seen all the evidence that has been presented.

7 And that also in terms of receiving notices
8 of depositions, we request that we receive notice
9 and be able to participate in those depositions.

10 HEARING OFFICER SPIVY-WEBER: So you think
11 the written rebuttal should be after the hearing.

12 MS. AKROYD: Either during or after. If
13 there's something that comes off during cross-
14 examination or during direct testimony in the
15 proceeding, we'd like an opportunity to respond in
16 writing. Thank you.

17 MR. MONA: I would just like to reiterate
18 my understanding of the steps that we're talking
19 about here.

20 So we're talking about first the responses
21 to the prosecution team's motion, followed by
22 depositions, followed by discovery, followed by
23 stipulations if any, followed by submittal of
24 exhibits, and followed by rebuttal testimony; is
25 that the general understanding of the order of

1 things to come?

2 MR. TAURIAINEN: I think if I can
3 characterize all the water agencies [skip]
4 Depositions could come at any time, so after
5 submittal, before submittal. [skip] restricted to
6 prior to the parties' submittals of the case in
7 chief.

8 MR. KELLY: That's not correct, and I'm not
9 sure I know which water agencies are aligned, so
10 I'll just say on behalf of Byron-Bethany that that's
11 not correct, that's not our position.

12 I want to take the depositions prior to the
13 submittal of direct written testimony in this case.
14 I don't intend on asking to depose anybody post
15 submittal of written testimony, with the caveat that
16 if there's something substantially different that we
17 learn during depositions that gets submitted during
18 direct testimony, we may reserve the right to come
19 before you and to request further discovery if for
20 some reason it's entirely inconsistent, but I don't
21 anticipate that happening.

22 So I anticipate that discovery for my
23 client would happen before written submittal, and
24 then we would be done.

25 HEARING OFFICER SPIVY-WEBER: Does anyone

1 need to read through that list that he just
2 outlined? Okay. We have many things to talk about.

3 Next, stipulations, to facilitate the
4 efficient conduct at the hearing, I ask the
5 prosecution team and the West Side Irrigation
6 District to meet and confer regarding stipulations
7 of the material facts not in dispute, and that was
8 mentioned earlier as well.

9 Does anyone have comments on this matter,
10 the idea of stipulations?

11 MS. ZOLEZZI: Yes, Hearing Officer. We
12 believe that the West Side Irrigation District
13 hearing has a lot of opportunity for stipulations. I
14 have, in fact, drafted a proposal to the prosecution
15 team that we're internally reviewing that he should
16 receive shortly. We believe that we can
17 significantly restrict the hearing issues, the key
18 issues, and reduce them.

19 In fact, as Ms. Spaletta mentioned earlier,
20 after discovery we can probably further reduce
21 those, so we think there's a real opportunity here
22 and we'll be conferring this week probably.

23 HEARING OFFICER SPIVY-WEBER: Any comment?

24 MR. TAURIAINEN: We look forward to
25 conferring.

1 HEARING OFFICER SPIVY-WEBER: I'll run
2 through the list, and if anyone has anything in
3 addition to speak to this. DWR? On the
4 stipulations.

5 MS. MCGINNIS: No, thank you.

6 HEARING OFFICER SPIVY-WEBER: Central
7 Delta?

8 MS. SPALETTA: Nothing further.

9 HEARING OFFICER SPIVY-WEBER: Byron-
10 Bethany?

11 MR. KELLY: No, thank you.

12 HEARING OFFICER SPIVY-WEBER: San Joaquin
13 Tributaries Authority.

14 MS. KINCAID: No, although I would be
15 interested to know if the stipulation would be just
16 between West Side and the prosecution team or if it
17 would be among a larger group of parties, and we
18 should think about how that will work if it's going
19 to be among everyone.

20 I would hate to get into a situation where
21 the prosecution team and West Side stipulate to
22 things and the other members don't and that doesn't
23 get us very far, so we should think about that.

24 HEARING OFFICER SPIVY-WEBER: Good point.
25 That's an excellent point, thank you.

1 State Water Contractors.

2 MS. MORRIS: No, thank you.

3 HEARING OFFICER SPIVY-WEBER: City and
4 County of San Francisco.

5 MR. KNAPP: We have nothing to add, thank
6 you.

7 HEARING OFFICER SPIVY-WEBER: And
8 Westlands.

9 MS. AKROYD: Nothing further.

10 HEARING OFFICER SPIVY-WEBER: Thank you.

11 Okay. In terms of time limits, as stated in
12 my October 8th letter, I intend to impose specific
13 time limits for opening and policy statements,
14 direct testimony and cross-examination. I'm also
15 considering time limits on rebuttal testimony.

16 Again, this is all to make sure we're not
17 saying more than we need to say, but we want to make
18 sure we say what is needed.

19 The parties may choose to combine their
20 allowed time with that of other parties, but will be
21 required to indicate their intent in advance of the
22 hearing.

23 I may alter the time limits at a future
24 date if necessary to ensure that hearing proceeds
25 efficiently.

1 Does anyone have comments on this? I'll
2 start with the prosecution team. Time limits.

3 MR. TAURIAINEN: I think we'll likely need
4 to address specific time limits at the hearing
5 either at the commencement of the hearing or maybe
6 in a second prehearing conference.

7 One issue would be that the prosecution
8 team would request that the hearing officer do
9 direct parties to coordinate and group their
10 presentations or cross-examination and rebuttal.

11 As Mr. Kelly with Byron-Bethany questioned,
12 there really are alignments of the parties here, and
13 in Byron-Bethany the hearing officer has instructed
14 the parties to group accordingly, and I would ask
15 that you do the same.

16 HEARING OFFICER SPIVY-WEBER: Okay. West
17 Side.

18 MS. ZOLEZZI: Yes, we do have some
19 comments.

20 First, to reply to the prosecution team. I
21 don't know how you can identify that parties are in
22 alignment before we've made any position statements,
23 but I guess we'll find out.

24 Regarding the specific time limits proposed
25 upon the parties, the twenty minute per witness

1 that's been thrown out is acceptable for all
2 witnesses to the West Side Irrigation District
3 except the parties' experts. We believe the experts
4 will need more time to summarize their statements.
5 We would suggest that the time limit be one hour for
6 experts and twenty minutes for the other parties.

7 And we think the total time limit as well
8 is not sufficient and we would respectfully request
9 three hours instead of the one hour.

10 Now, this does not mean that the hearing
11 officer can't step in and say this is being
12 duplicative, and that is entirely appropriate, but
13 we would request the opportunity to use that full
14 time period if it's not duplicative and if it is
15 providing new evidence.

16 So I think it may also, as the prosecution
17 team mentioned, be easier to set those time limits
18 after discovery, so perhaps we would want to have a
19 post discovery hearing conference to hone in on
20 that. Thank you.

21 HEARING OFFICER SPIVY-WEBER: South Delta
22 Water Agency.

23 MR. RUIZ: South Delta Water Agency agrees
24 with the comments Ms. Zolezzi just made in terms of
25 the specific time limit, but just emphasizes that I

1 don't think we can fully know that until we get done
2 with the discovery in terms of how that's going to
3 shake out or if it's just going to be additional
4 disputes as we go along. Thank you.

5 HEARING OFFICER SPIVY-WEBER: Do you think
6 there will need to be a prehearing conference post -
7 -

8 MR. RUIZ: I think after, Yes, I think an
9 additional prehearing conference after the discovery
10 is completed or at least substantially completed is
11 going to help things significantly.

12 HEARING OFFICER SPIVY-WEBER: And is that
13 also the time when parties would indicate that they
14 are combining their times if we held this prehearing
15 conference?

16 MR. RUIZ: I would think that would be the
17 time parties would be able to understand that after
18 the discovery is completed.

19 HEARING OFFICER SPIVY-WEBER: Okay.
20 California Department of Water Resources.

21 MS. MCGINNIS: Thank you, Hearing Officer.
22 Given that the evidence that parties are submitting
23 is going to be in a written testimony, DWR agrees
24 with the time limits that are proposed in the -- I
25 can't remember the name of the document, but the

1 document attached to the hearing notice.

2 And then also agree that we can coordinate
3 cross and rebuttal.

4 HEARING OFFICER SPIVY-WEBER: South Delta
5 Water Agency?

6 MR. RUIZ: I just responded. I think you
7 meant Central Delta.

8 HEARING OFFICER SPIVY-WEBER: I'm sorry.
9 Yes, Central Delta. I keep bouncing around you.

10 MS. SPALETTA: Thank you, Hearing Officer.
11 Jennifer Spaletta for Central Delta Water Agency. I
12 would actually suggest that the second prehearing
13 conference occur after the submittal of the written
14 rebuttal testimony. I think that is the point in
15 time in which we will know the scope, particularly
16 of expert testimony.

17 I will tell you that I have personally
18 reviewed some of the spreadsheets that the State
19 Board has produced and some of them have more than
20 twenty tabs, so if I were to ask one question per
21 tab of the spreadsheet I would exceed my ten minutes
22 on cross.

23 So I am concerned about seeing what we have
24 as far as written submittals, particularly from
25 experts, before we talk about time limits, and I

1 think it would be most appropriate after all of the
2 written testimony has been presented.

3 HEARING OFFICER SPIVY-WEBER: But you are
4 interested in the combination of the testimonies.

5 MS. SPALETTA: Absolutely. I do not want to
6 be here any longer than necessary, along with
7 everyone else, so we will definitely want to combine
8 but we can't make that decision until we've seen the
9 testimony.

10 HEARING OFFICER SPIVY-WEBER: Okay. Thank
11 you. Byron-Bethany.

12 MR. KELLY: Yes, thank you. We agree with
13 Central Delta that the second prehearing conference
14 happen after the submittal of written testimony. I
15 think that makes the most sense.

16 As for the time limits at the hearing, I
17 think it all depends on how many parties are
18 aligned. If there are two or three parties aligned
19 in cross-examination, it might make sense to limit
20 it to twenty minutes. But if there are eight parties
21 aligned, it wouldn't make sense to give them only
22 twenty minutes; maybe an hour for cross. And so
23 that's the kind of stuff I think we're not going to
24 know maybe until the second prehearing conference.

25 I will say, though, that I think conducting

1 discovery will go a long way to providing parties
2 with a good opportunity to limit cross-examination,
3 because that's when we'll really get to be able to
4 get at the real questions we have, figure out where
5 the real controversies are, and then kind of present
6 those to you in a streamlined cross-examination at
7 the hearing.

8 And so, again, I just think that the
9 ability to do discovery is going to go a long way to
10 making the hearing a little more streamlined and
11 move a little more quickly, but as for the actual
12 times, I think it's best left until the second
13 prehearing conference to figure out what those
14 should be.

15 HEARING OFFICER SPIVY-WEBER: San Joaquin
16 Tributaries Authority.

17 MS. KINCAID: We also agree that a second
18 prehearing conference is probably a good idea, and
19 it's probably best to review times at that point.

20 The expert testimony time does seem
21 limited. If I had to make a request right now, we
22 would ask for an hour for our experts. But again, I
23 think that's better left to closer to the hearing.
24 Thanks.

25 HEARING OFFICER SPIVY-WEBER: Now, remind

1 me when are the stipulations, where do they fall?

2 MR. MONA: I think I heard the parties say
3 that the stipulations could be submitted at any
4 time, but according to my list here, stipulations
5 should come after discovery and before the exhibits
6 and before written testimony.

7 And with regards to the prehearing
8 conference, any suggestions as to when you'd like to
9 have the prehearing conference; two weeks after
10 rebuttal testimony is submitted, or two weeks before
11 the hearing, or any suggestions?

12 MS. KINCAID: Two weeks before the hearing
13 is probably the best idea. At that point hopefully
14 we'll have all stipulations, all discovery,
15 everything will be wrapped up and we can all speak
16 much more intelligently on what we think is going to
17 happen at the hearing. So that sounds appropriate to
18 the San Joaquin Tributaries Authority.

19 HEARING OFFICER SPIVY-WEBER: And those who
20 have spoken up earlier, if you disagree with this,
21 raise your hand; otherwise, we'll assume that you
22 agree.

23 MR. WILLIAMS: Ma'am, this is Phil Williams
24 with Westland. I would echo that the trigger for a
25 second prehearing conference is most appropriately

1 the hearing itself and not the submission of any
2 discovery or statements.

3 HEARING OFFICER SPIVY-WEBER: State Water
4 Contractors.

5 MS. MORRIS: One point of clarification. In
6 terms of the opening or policy statements, the
7 parties who are only participating by rebuttal and
8 cross-examination are limited to five minutes, and
9 I'd like to clarify that we can also submit
10 statements in writing, because it's not exactly
11 clear.

12 HEARING OFFICER SPIVY-WEBER: Yes, that was
13 my understanding as well.

14 MS. MORRIS: Fantastic. And then in terms
15 of rebuttal, I believe a second prehearing
16 conference after we've seen the evidence and the
17 parties' statements, then I will be able to assess
18 in a much better fashion how much time I would need
19 for rebuttal.

20 And I would only point out that if the time
21 limits are expanded for cross-examination, that
22 means there's more material to be covered and they
23 should be correspondingly expanded for cross-
24 examination as well.

25 HEARING OFFICER SPIVY-WEBER: Finally, City

1 and County of San Francisco.

2 MR. KNAPP: We agree that a second
3 prehearing conference sounds like the best way to go
4 forward, and that --

5 HEARING OFFICER SPIVY-WEBER: What do you
6 think about making it part of the hearing itself, is
7 the recommendation from Westlands.

8 MR. KNAPP: I understood the recommendation
9 from Westland was just that the time trigger for
10 when we would have the second prehearing conference
11 should be set in relation to the hearing, so it
12 should be two weeks back from the start of the
13 hearing.

14 HEARING OFFICER SPIVY-WEBER: Is that what
15 you said? I'm sorry, I misunderstood.

16 MR. WILLIAMS: That may not have been what
17 I said but that is what I meant, yes.

18 MR. KNAPP: And we agree with that.

19 HEARING OFFICER SPIVY-WEBER: Good thing it
20 got clarified. Thank you.

21 Okay, the order of presentation, are there
22 any comments on the tentative order of presentation
23 or cross specified in my October 8 letter? Yes.

24 MR. TAURIAINEN: Prosecution team. No
25 specific comments other than the one I made earlier

1 about needing to group the parties according to
2 alignment.

3 HEARING OFFICER SPIVY-WEBER: Right. Okay.
4 Absolutely, parties will be encouraged through time
5 limits to do this, because it will give you more
6 time, but we will look at the expert witness time
7 request.

8 Let's see. The West Side?

9 MS. ZOLEZZI: No comments.

10 HEARING OFFICER SPIVY-WEBER: Department of
11 Water Resources?

12 MS. MCGINNIS: No comments.

13 HEARING OFFICER SPIVY-WEBER: South Delta.

14 MR. RUIZ: No comments.

15 HEARING OFFICER SPIVY-WEBER: Central
16 Delta.

17 MS. SPALETTA: No comments.

18 HEARING OFFICER SPIVY-WEBER: Byron-
19 Bethany.

20 MR. KELLY: No comments, thank you.

21 HEARING OFFICER SPIVY-WEBER: San Joaquin
22 Tributaries Authority.

23 MS. KINCAID: Also no comments, thank you.

24 HEARING OFFICER SPIVY-WEBER: State Water
25 Contractors.

1 MS. MORRIS: A quick clarification. If
2 parties decide to group and combine their times, in
3 particular on cross-examination, I want to make sure
4 that we're able to have two attorneys potentially
5 questioning, because we'd like to be able to
6 coordinate with other parties who may have similar
7 interests but there may be a need for one attorney
8 to ask, you know, some follow-up questions so long
9 as it's within the time limits.

10 HEARING OFFICER SPIVY-WEBER: So you're
11 requesting that there be at least two or a maximum
12 of two.

13 MS. MORRIS: My request is, if parties
14 group, that attorneys from different parties are
15 able, within the timeframe of the grouping, to ask
16 questions.

17 HEARING OFFICER SPIVY-WEBER: Okay. That
18 should be okay.

19 MS. KUENZI: That would be, I think, what
20 we were thinking in terms of combining time, was
21 that the parties, once combined, you could allocate
22 the time among yourselves as you saw fit.

23 HEARING OFFICER SPIVY-WEBER: City and
24 County of San Francisco.

25 MR. KNAPP: No comments.

1 HEARING OFFICER SPIVY-WEBER: And
2 Westlands.

3 MS. AKROYD: Nothing regarding the order of
4 presentation or cross, but I'd note that it states
5 on here Westlands Water Company and It's Westlands
6 Water District. The October 8th document.

7 HEARING OFFICER SPIVY-WEBER: Oops. I
8 didn't catch that, I'm sorry. I do know that.

9 Okay, redirect and recross examination. At
10 my discretion during the hearing I may allow
11 redirect examination upon an offer of proof as to
12 the substance, purpose, and relevancy of the
13 expected testimony. So this is, I hope there will be
14 very little of this, but it certainly is possible.
15 So does anyone have any questions or comments
16 regarding redirect and recross? Let's start with the
17 prosecution team.

18 MR. TAURIAINEN: No.

19 HEARING OFFICER SPIVY-WEBER: West Side.

20 MS. ZOLEZZI: We don't necessarily disagree
21 with the statement, we just want to make sure that
22 where it is needed it's allowed.

23 HEARING OFFICER SPIVY-WEBER: California
24 Department of Water Resources.

25 MS. MCGINNIS: DWR agrees that it may be

1 necessary to have redirect and recross.

2 HEARING OFFICER SPIVY-WEBER: South Delta.

3 MR. RUIZ: No comments other than it's

4 likely it will be necessary.

5 HEARING OFFICER SPIVY-WEBER: Central

6 Delta.

7 MS. SPALETTA: No further comments.

8 HEARING OFFICER SPIVY-WEBER: Byron-

9 Bethany.

10 MR. KELLY: The only comment is if you're

11 going to allow redirect then we need to have

12 recross, but that's it.

13 HEARING OFFICER SPIVY-WEBER: San Joaquin

14 Tributaries Authority.

15 MS. KINCAID: No comments, thank you.

16 HEARING OFFICER SPIVY-WEBER: State Water

17 Contractors.

18 MS. MORRIS: No comments.

19 HEARING OFFICER SPIVY-WEBER: San Francisco

20 City and County.

21 MR. KNAPP: No comments, thank you.

22 HEARING OFFICER SPIVY-WEBER: Westlands.

23 MS. AKROYD: No comments, thank you.

24 HEARING OFFICER SPIVY-WEBER: Now, we have

25 two more, closing briefs and prehearing briefs. I

1 plan to allow the submission of closing briefs. I
2 will set the deadline and page limits for closing
3 briefs at the end of the hearing. I'd like to hear
4 from parties as to whether you think submittal of
5 prehearing briefs would be helpful, and the timing
6 of those briefs. So let's start with prosecution
7 team.

8 MR. TAURIAINEN: I assume just as an
9 initial matter that prehearing briefs would be
10 limited to the parties who are submitting cases in
11 chief rather than cross or rebuttal parties.

12 HEARING OFFICER SPIVY-WEBER: Right. That's
13 my understanding.

14 MS. KUENZI: I think actually it depends on
15 what kind of prehearing briefs we would allow. If
16 those are legal briefs on legal issues, I don't
17 think it would be necessarily limited.

18 HEARING OFFICER SPIVY-WEBER: Oh, okay.

19 MS. KUENZI: Because there may be relevant
20 comments on that as well. So really I think we're
21 looking for comments on what kind of briefing that
22 you think would be helpful to us.

23 MR. TAURIAINEN: Then I think some
24 prehearing briefing will be necessary and will
25 likely be very closely aligned with the prehearing

1 briefs that are about to be requested in the Byron-
2 Bethany matter. In that case the parties later this
3 week will be submitting their specific legal issues
4 to be briefed in that case, so the prehearing briefs
5 in that case.

6 As far as closing briefs, I think setting
7 time and page limits at the end of the hearing
8 [skip].

9 HEARING OFFICER SPIVY-WEBER: West Side.

10 MS. ZOLEZZI: I'm sorry, Hearing Officer, I
11 was taken off guard by the statement about what's
12 happening in the BBID matter since we weren't
13 notified about that.

14 HEARING OFFICER SPIVY-WEBER: But we're not
15 talking about that here, right?

16 MS. ZOLEZZI: No, we're not talking about
17 that here.

18 We do believe it would be helpful to have
19 prehearing briefs. I do believe those would have to
20 be very narrow and very direct. I simply think it
21 would be helpful for each party to have an
22 opportunity to put forward its legal theories. I
23 think that would help the hearing officer in
24 understanding what we're trying to say through
25 putting on our case in chief and our rebuttal

1 evidence, but I don't think they need to be very
2 lengthy.

3 And I don't have anything to add as far as
4 timing. It's going to be very difficult to put those
5 together after discovery has been completed, after
6 the parties have submitted their exhibit lists and
7 witnesses and still have enough time to put those
8 together before the hearing, so I think a prehearing
9 conference will help put all that together.

10 HEARING OFFICER SPIVY-WEBER: DWR.

11 MS. MCGINNIS: DWR agrees that closing
12 briefs should be allowed and that prehearing legal
13 briefs to help the hearing team understand the
14 parties' legal theories would be helpful. And that
15 since it's for your benefit, the deadline, I think,
16 is up to you.

17 HEARING OFFICER SPIVY-WEBER: Okay. Thank
18 you. South Delta.

19 MR. RUIZ: South Delta agrees that
20 prehearing briefs based on legal issues is
21 necessary. And timing, again, I think it going to be
22 very close in time to the hearing just because the
23 reality of how crunched this will be. And also
24 agrees that post hearing briefs are necessary.

25 HEARING OFFICER SPIVY-WEBER: Central

1 Delta.

2 MS. SPALETTA: I have nothing to add to
3 that.

4 HEARING OFFICER SPIVY-WEBER: Byron-
5 Bethany.

6 MR. KELLY: I think prehearing briefs may
7 be useful for legal issues. I think arguing fact
8 issues in prehearing briefs isn't going to be very
9 useful because you don't know what you're going to
10 accept and not accept into evidence, and so I think
11 that's probably best saved for the hearing and for
12 posthearing briefing.

13 HEARING OFFICER SPIVY-WEBER: San Joaquin
14 Tributaries Authority.

15 MS. KINCAID: The SJTA endorses prehearing
16 briefs. My suggestion would be that they be due
17 about a week before the hearing so folks can read
18 them, depending on the length. I mean, you may need
19 more than a week if you're going to allow fifty
20 pages, but if they're twenty or thirty pages a week
21 before the hearing seems like a prudent approach.
22 Thank you.

23 HEARING OFFICER SPIVY-WEBER: And do you
24 think it could be done during the prehearing
25 conference?

1 MS. KINCAID: You know, I think it's
2 probably smart to have them due just after that. I
3 think certain issues may be teed up if people are
4 not particularly happy with the time limit that
5 they're given and they want to put that in a
6 prehearing brief, you can do that.

7 I also think sometimes it's just difficult
8 to provide prehearing briefs at the prehearing
9 conference. My suggestion would be to have the
10 conference two weeks out and then the brief due
11 maybe a week later. That would give us a chance to
12 read it. Thanks.

13 HEARING OFFICER SPIVY-WEBER: State Water
14 Contractors.

15 MS. MORRIS: State Water Contractors
16 support prebriefing on legal issues that's narrow in
17 scope, preferably with page limitations.

18 And in terms of closing briefs, I think
19 closing briefs are a great idea. It seems to me
20 something that the hearing officer might handle at
21 the end of the hearing and may give the parties
22 direction on how it would be helpful for those to be
23 drafted and what questions potentially you would
24 like to have answered.

25 HEARING OFFICER SPIVY-WEBER: City and

1 County of San Francisco.

2 MR. KNAPP: San Francisco supports discreet
3 prehearing legal briefing and agrees with the
4 timeline suggested by the SJTA of a week before the
5 hearing commences. And also supports the closing
6 briefs. Thank you.

7 HEARING OFFICER SPIVY-WEBER: And
8 Westlands.

9 MS. AKROYD: Westlands would support
10 prehearing legal briefs and closing briefs for all
11 parties.

12 MR. KELLY: Hearing Officer Spivy-Weber,
13 can I just clarify perhaps. When I said that I think
14 it's appropriate to do prehearing legal briefing and
15 save the factual issues for what's kind of argued
16 about at the hearing and in closing briefing, I
17 don't want that to preclude any party from being
18 able to submit a brief ahead of the hearing, a
19 motion to dismiss or some other kind of motion that
20 would be based on judicially noticeable facts or
21 facts not in dispute. There may be some procedural
22 motions that folks want to file that may involve
23 facts that are not disputed or judicially
24 noticeable. I just don't want to preclude anybody
25 from doing that.

1 HEARING OFFICER SPIVY-WEBER: Okay. Thank
2 you. That's a good clarification, thank you very
3 much.

4 MR. KELLY: Thank you.

5 HEARING OFFICER SPIVY-WEBER: Finally, I
6 want to remind the parties with regard to ex parte
7 communications. There will be no ex parte
8 communications with State Board members or State
9 Board hearing team staff and supervisors regarding
10 substantive or controversial procedural issues
11 within the scope of the proceeding.

12 Any communications regarding potentially
13 substantive or controversial procedural matters,
14 including but not limited to evidence, briefs, and
15 motions, must demonstrate that all parties were
16 served and the manner of service.

17 As we contemplate dates, there are a lot of
18 you, and it's very, very hard to find dates. So in
19 February will you look at your calendars, and when
20 you submit your letters by Wednesday, could you also
21 indicate what your availability is for dates in
22 February and March. And I would say a good three
23 days or four. Probably three, I hope three, but you
24 know, I'm optimistic. We've set aside five
25 initially.

1 Yes.

2 MR. TAURIAINEN: Could you clarify what
3 letters on Wednesday. Do you mean oppositions to the
4 motions for protective orders?

5 HEARING OFFICER SPIVY-WEBER: Yeah, yeah.
6 So let's just take care of both tasks at one time.

7 Does anyone wish to provide comment or any
8 other procedural matters not previously discussed
9 today? Seeing no one, I will provide a letter
10 regarding the procedural issues that we discussed
11 today after we have -- as soon as possible. I can't
12 guarantee exactly when that will be, but it will be
13 very -- I am very interested in making sure that
14 this moves along as promptly as possible, and so I
15 will get a letter out as soon as I can after
16 Wednesday.

17 Thank you all for participating in this
18 prehearing conference. Your participation will
19 assist us in our efforts to ensure that the hearing
20 proceeds smoothly. This has been very, very helpful.
21 Thank you.

22 (Adjourned)

23 --o0o--

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TRANSCRIBER'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 transcribed by me, a certified transcriber 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 November, 2015.



Terri Harper
Certified Transcriber
AAERT No. CET**D-709