

State Water Resources Control Board

January 30, 2015
VIA ELECTRONIC MAIL

TO: ENCLOSED REVISED SERVICE LIST OF PARTICIPANTS

PRE-HEARING CONFERENCE RELATED TO SUPPLEMENTAL HEARING ON ORDER WR 2012-0012 (ORDER GRANTING RECONSIDERATION) - IN THE MATTER OF THE PETITIONS FOR RECONSIDERATION OF ORDER WR 2011-0005

This letter addresses the procedural issues that were raised during the State Water Resources Control Board's (State Water Board) January 15, 2015, pre-hearing conference and several additional procedural issues.

Documents Submittal Deadline Schedule

The following submittal deadline schedule is set as agreed upon by all parties:

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| 12:00 noon, Monday, April 6, 2015 | Deadline for receipt of Stipulations as to evidence and/or legal issues, and other such matters that will facilitate the Supplemental Public Hearing process. |
| 12:00 noon, Friday, April 10, 2015 | Deadline for receipt of optional Opening Briefs. |
| 12:00 noon, Friday, May 8, 2015 | Deadline for receipt and service of proposed Case-in-Chief, including testimony, exhibits, lists of exhibits, qualifications, and statements of service. This will also be the deadline for revised Notices of Intent to Appear. |
| 12:00 noon, Wednesday, June 3, 2015 | Deadline for receipt of Rebuttal testimony, exhibits, list of exhibits, qualifications and statement of service. ¹ |

Motions Regarding Scope and Purpose of Hearing

Motion to Change Scope: A preliminary issue discussed at the pre-hearing conference is San Luis Delta Mendota Water Authority, Modesto Irrigation District, State Water Contractors and Westlands Water District (collectively, the Water Agencies) request to change the scope of the

¹ The hearing officers may permit the submission of rebuttal testimony that responds to issues arising at the hearing at a later date.

hearing to include a definitive determination of Woods Irrigation Company's rights and those of its customers, and the represented Landowners response to this request. This motion to change the scope of the hearing to include a definitive determination of Woods' rights and to allow additional parties to the hearing is denied. The purpose of this supplemental hearing remains a determination whether to issue a Cease and Desist Order (CDO) against Woods Irrigation Company (Woods), and if so, the CDO's content.

Motion to Exclude Certain Landowners: A preliminary issue discussed at the pre-hearing conference is the represented Landowners' (Groups A and B) and Woods' "Joint Petition" requesting that drainage-only landowners/customers be removed from this proceeding. The Division of Water Rights Prosecution Team (Prosecution Team) submitted concurrence with the "Joint Petition's" request to exclude the list of submitted landowners so long as the lands/owners listed in that petition neither receive water from Woods nor claim to have a right to receive water from Woods under any basis of right (their own or any right held by Woods). The Water Agencies, in their January 9th pre-hearing conference brief and during discussion at the pre-hearing conference, also agreed with the "Joint Petition" contingent upon similar caveats expressed by the Prosecution Team.

We are not convinced that a ruling excluding the drainage-only landowners/customers is necessary. We believe that participation by Woods' drainage-only or irrigation landowners\customers should be at their discretion, but agree with the parties that many drainage-only landowners may not have cause to participate in proceeding upon a clarification of the key hearing issues, as discussed below.

Key Hearing Issues: A preliminary issue discussed at the pre-hearing conference was the clarification of the Key Issues specified in the November 10, 2014 Notice of Supplemental Public Hearing and Pre-Hearing Conference (Hearing Notice). Based on the discussion, we find that a comprehensive resolution of the matter being addressed by this proceeding can be reached, if the represented Landowners supplemented the current hearing record with information that specifically addresses the following revised issues:

1. What evidence of water rights do landowners have, that receive water directly diverted from the Middle River by Woods Irrigation Company (Woods) and that is delivered through Woods' irrigation facilities?
2. Based on existing evidence in the record from the 2010 hearings and on supplemental evidence, cross examination, or arguments that arise as a result of the supplemental hearing, should the State Water Board issue a Cease and Desist Order against Woods Irrigation Company?

Participation in the Evidentiary Portion of the Hearing - Presentation of Cases-In-Chief

We find that it is not in the public interest to grant Westlands' request to participate in the evidentiary hearing, and direct that the Service list of Participants be revised to exclude Westlands from the list.

Order WR 2012-0012 reopened the Woods Irrigation Company CDO Hearing for the limited purpose of allowing landowners in the Woods Service Area to participate. In accordance with section 648.1 of the State Water Board regulations and the hearing notice, the parties to this hearing are the represented Landowners (Groups A and B), Prosecution Team, Woods, South

Delta Water Agency, Central Delta Water Agency, San Luis and Delta-Mendota Water Authority, Modesto Irrigation District, State Water Contractors, and the San Joaquin County and the San Joaquin County Flood Control and Water Conservation District.

Only the represented Landowners (Groups A and B) may present a new Case in Chief.

Scope of Cases-in-Chief

At the pre-hearing conference, we discussed the broad reach of the represented Landowners' cases-in-chief that were submitted in their Notices of Intent. It appeared clear that the Landowners already intend to substantially modify their intended list of witnesses, including by not calling some witnesses listed, planning on calling others only for cross-examination. Additionally, all parties expressed the hope that stipulation among the parties could further shorten the proceedings and affect the witness lists.

We intend to conduct the hearing as efficiently as possible by imposing a number of other procedural restrictions, including potential time limits to be determined after submittal of any stipulations as to evidence and/or legal issues, and other such matters that will facilitate the Supplemental Hearing process. We shall require the represented Landowners (Groups A and B) to submit revised Notices of Intent to Appear after the deadline for any stipulated agreements, concurrent with evidence submittal.

Stipulation As To Matters Not In Dispute

We appreciate the parties' plans to meet, confer, prepare, and submit to the State Water Board submissions of stipulations as to evidence and/or legal issues, and other such matters to facilitate efficiency in the Supplemental Public Hearing process.

Time Limits

We will impose the following time limits on the parties' presentations.

- Policy Statements: As set forth in the hearing notice, policy statements are limited to 5 minutes each.
- Opening Statements: Opening statements will be limited to 20 minutes each. (Please note that opening statements may be submitted in writing.)
- Direct testimony: Time limits for oral summaries of direct testimony by the represented Landowners (Groups A and B) will be set after submission of stipulations.

Opening Statements for Parties with No Case-in-Chief

We will only allow Opening statements to be presented by the represented Landowners (Groups A and B).

The purpose of an opening statement is to provide an overview of a party's case-in-chief, and describe what the evidence that will be introduced during the case-in-chief is intended to establish. Accordingly, we will not permit the "Current Parties" who previously presented a case-in-chief to make an opening statement. We will, however, permit those participants to file an opening brief.

Order of Presentation

The following order of presentation will be followed:

- Opening statements;
- Cross-examination of Prosecution Team witnesses by represented Landowners (Groups A and B);
- Cross-examination of other parties' witnesses in the 2010 proceeding, by represented Landowners (Groups A and B);
- Any permitted re-direct of witnesses in the 2010 proceeding;
- Cases-in-chief;
- Cross-examination of Landowners' (Groups A and B) witnesses;
- Redirect of Landowners' witnesses;
- Any permitted re-cross-examination of represented Landowners' (Groups A and B) witnesses;
- Any rebuttal testimony;
- Any cross-examination of rebuttal witnesses;
- Any permitted re-direct of rebuttal witnesses;
- Any permitted re-cross of rebuttal witnesses.

Scope of Cross Examination

At the pre-hearing conference, parties asked about the scope of cross-examination. Cross examination is not limited to the scope of direct testimony. (Cal. Code Regs., tit. 23, § 648.5.1; Gov. Code, § 11513, subd. (b).) Cross-examination should, however, be limited to the factual issues in dispute. We will not permit the parties to attempt to make legal or policy arguments during the evidentiary portion of the hearing, through cross-examination, the presentation of direct testimony, or otherwise. In addition, the scope of cross-examination of any redirect or rebuttal testimony that we allow will be limited to the scope of the redirect or rebuttal testimony, respectively.

Timing of Rebuttal

"Current Parties" will be allowed to offer rebuttal of new evidence and any redirect examination permitted by us. After the represented Landowners (Groups A and B) have presented their cases-in-chief and their witnesses have been cross-examined, we will allow parties to present rebuttal evidence. Rebuttal evidence is new evidence used to rebut evidence presented by another party. In order to improve hearing efficiency, we will expect the majority of rebuttal testimony and exhibits to be submitted prior to the hearing (see above schedule). Submission of additional rebuttal evidence and testimony will be permitted only to the extent that it addresses issues raised in the hearing itself. Rebuttal evidence is limited to evidence that is responsive to evidence presented in connection with another party's case-in-chief, and it does

not include evidence that should have been presented during the case-in-chief of the party submitting rebuttal evidence. It also does not include repetitive evidence. Cross-examination of rebuttal evidence will be limited to the scope of the rebuttal evidence.

Closing Statements and Briefs

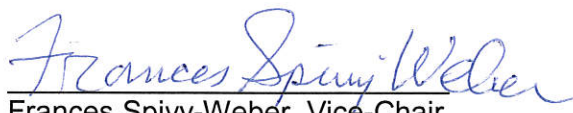
We will not allow oral closing statements, but we will allow written closing statements or briefs. We will set the deadline for written closing statements or briefs at the end of the hearing.


Ex Parte Communications

We would like to take this opportunity to remind the parties that ex parte communications concerning substantive or controversial procedural issues relevant to this hearing are prohibited. Please be sure to copy the service list on any correspondence to us, the other Board Members, or the hearing team.

Thank you for your continued cooperation. If you have any non-controversial, procedural questions, please contact Questions regarding non-controversial procedural matters should be directed to Staff Counsel Marianna Aue at (916) 327-4440 (Marianna.Aue@waterboards.ca.gov), or Staff Engineer Ernest Mona at (916) 341-5359 (Ernie.Mona@waterboards.ca.gov).

Sincerely,


Frances Spivy-Weber, Vice-Chair
Hearing Officer


Steven Moore, Member
Hearing Officer

CC:

Enclosures: Revised Service List

REVISED SERVICE LIST OF PARTICIPANTS

SUPPLEMENTAL PUBLIC HEARING AND PRE-HEARING CONFERENCE
RELATED TO ORDER WR 2012-0012 (ORDER GRANTING RECONSIDERATION) - IN THE
MATTER OF THE PETITIONS FOR RECONSIDERATION OF ORDER WR 2011-0005
(April 23, 2010, Updated: 01/13/14; 03/14/14; 08/17/14; 09/04/14; 09/19/14, 12/15/14, 01/13/15)

Note: The following Revised Service List of Participants was initially developed based on NOIs submitted in response to the State Water Board's April 7, 2010 [Notice of Public Hearings](#), and subsequently revised based on NOIs submitted in response to the State Water Board's November 10, 2014 [Notice of Supplemental Public Hearing and Pre-hearing Conference](#)

Pursuant to the State Water Board's November 10, 2014 Notice, "Woods' customers are the only parties who will be allowed to present evidence. Participation by current parties will be limited only to cross-examination and rebuttal of new evidence, and any redirect examination permitted by the hearing officers."

The current parties to the hearing are: Division of Water Rights Prosecution Team, Woods Irrigation Company, South Delta Water Agency, Central Delta Water Agency, San Luis and Delta-Mendota Water Authority, Modesto Irrigation District, the San Joaquin County and the San Joaquin County Flood Control and Water Conservation District, and State Water Contractors.

THE FOLLOWING **MUST BE SERVED** WITH WRITTEN TESTIMONY, EXHIBITS AND OTHER DOCUMENTS. (All have AGREED TO ACCEPT electronic service, pursuant to the rules specified in the hearing notice.)

Group A - REPRESENTED LANDOWNERS²

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Group B - REPRESENTED LANDOWNERS³

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(updated 12/15/14)

² **Represented Landowners are:** R.D.C. FARMS, INC; RONALD & JANET DEL CARLO EDDIE VIERRA FARMS, LLC; DIANNE E. YOUNG; BERNIECE SILVA TR ET AL; LARRY AND DONETTE D'ALONZO TR; RENZO AND EVELYN MENCONI; PATRICK J & PATRICIA KENNEDY; MARCHINI LAND CO.; LILLIAN MAZZANTI SURVIVORS TRUST; JOHN ROBERT SANGUINETTI; SINGH FARMS INC; KELLY PELLEGGRI, TRUSTEE; DINO AND NICOLE DEL CARLO; MARY PEREIRA COELHO TR; RELM PROPERTIES, LLC; MARIE PETERS TR ET AL.; MUSSI AG; ANTONIOLLI FAMILY LTD PTP; ARIANA ANTONIOLLI TR; RONNIE AND JANET DEL CARLO TR; GEORGE AND PAMELA VIERRA; CURTIS GRUNSKY; HELEN COSTA TR ET AL; KEVEN AND DENISE JONES; VICKY PIERINI; LARRY VIERRA ET AL; TIMOTHY AND LYNN GRUNSKY; EVO AND ANGELA DEL CARLO; MARY PERRY; MICHAEL VIERRA; SCHMIDT HIGHWAY 4 RANCH LLC; LORRAINE DEL SOLDATO-SWANY AND LORETTA MOULDING; ISONE INC NATHAN MUSSI; EMILY MARIE CABRAL; PATRICIA HAMM, TRUSTEE, LOUIS MELLO TR AND HELEN BALCAO TR; JOHN T. BERTILACCHI ET AL.; RICHARD KLEIN; MANUEL RODGERS; JUDITH BALCAO TR ET AL.; JUDITH BALCAO TR; PATRICIA BOWLES ET AL.; JACK KLEIN TRUST PTP; ROBINSON DIVERSIFIED FARMS, LP; HEATHER ROBINSON TANAKA; HONKER LAKE RANCH LP; PAK, YONG KIL & YOUNG SUN C/O CELLI RANCHES; A ROSSI INC; ANDREW M. HARRAGON TR ET AL.; AUGUST & LILLIAN TR MAZZANTI; MARIO JAQUES TR; RICHARD AND VINCENT MARCHINI; RICHARD AND DEBBIE MARCHINI TR; LINDA A. LEHMANN-KITZMILLER C/O MARCHINI LAND CO PTP; JOHN E. AND DIXIE L. BRASS TRUST C/O MARCHINI LAND CO PTP

³ **Represented Landowners are:** RUDY M MUSSI INVESTMENT LP ET AL.; LORRY MUSSI TR ET AL.; LORY C MUSSI INVESTMENT LP; ELYSE RODGERS VIEIRA AND ELYSE RODGERS VIEIRA SEPARATE PROPERTY TR; ELYSE RODGERS VIEIRA SEPARATE PROPERTY TR; CECIL J. & SANDRA J. RODGERS; RUDY M. & TONI MUSSI ET AL.

<p>WESTLANDS WATER DISTRICT Eileen Diepenbrock Jonathan Marz Diepenbrock Elkin, LLP 500 Capitol Mall, Suite 2200 Sacramento, CA 95814 emd@diepenbrock.com jmarz@diepenbrock.com (updated 12/15/14)</p> <p>Craig Manson Philip Williams 400 Capitol Mall, 29th Floor Sacramento, CA 95814 Telephone: (916) 321-4207 cmanson@westlandswater.org pwilliams@westlandswater.org (updated 01/13/15)</p>	
<p><u>CURRENT PARTIES</u></p>	
<p>WOODS IRRIGATION COMPANY S. Dean Ruiz, General Counsel HARRIS, PERISHO & RUIZ ATTORNEYS AT LAW Brookside Corporate Center 3439 Brookside Road, Suite 210 Stockton CA 95219 dean@hpirlaw.net (Updated 03/13/14)</p> <p>John Herrick, Co-Counsel 4255 Pacific Avenue, Suite 2 Stockton, CA 95207 jherrlaw@aol.com (Updated 03/13/14)</p>	<p>DIVISION OF WATER RIGHTS PROSECUTION TEAM David Rose State Water Resources Control Board 1001 I. Street Sacramento, CA 95814 David.Rose@waterboards.ca.gov John.O'Hagan@waterboards.ca.gov (Updated 08/27/14)</p>
<p>MODESTO IRRIGATION DISTRICT Tim O'Laughlin Valeri Kincaid O'Laughlin & Paris LLP P.O. Box 9259 Chico, CA 92927 towater@olaughlinparis.com kincaid@olaughlinparis.com</p>	<p>STATE WATER CONTRACTORS Stanley C. Powell Kronick, Moscovitz, Tiedemann & Girard 400 Capitol Mall, 27th Floor Sacramento, CA 95814 spowell@kmtg.com (updated 03/14/14)</p> <p>Stefanie Morris, General Counsel State Water Contractors 1121 L Street, Suite 1050 Sacramento, CA 95814 smorris@swc.org (updated 09/18/14)</p>

<p>THE SAN LUIS & DELTA-MENDOTA WATER AUTHORITY Jon Rubin, General Counsel San Luis & Delta-Mendota Water Authority 400 Capitol Mall, 29th Floor Sacramento, CA 95814 Jon.Rubin@sldmwa.org (updated 03/14/14) (updated 1/13/15)</p> <p>Daniel J. O’Hanlon Rebecca R. Akroyd Kronick, Moskovitz, Tiedemann & Girard 400 Capitol Mall, 27th Floor Sacramento, CA 95814 dohanlon@kmtg.com rakroyd@kmtg.com (updated 03/14/14)</p> <p>Eileen Diepenbrock Jonathan Marz Diepenbrock Elkin, LLP 500 Capitol Mall, Suite 2200 Sacramento, CA 95814 ediepenbrock@diepenbrock.com jmarz@diepenbrock.com (updated 03/14/14) (updated 09/04/14)</p>	<p>CENTRAL DELTA WATER AGENCY Dean Ruiz Harris, Perisho & Ruiz 3439 Brookside Road, Suite 210 Stockton, CA 95219 dean@hpllp.com</p>
<p>SOUTH DELTA WATER AGENCY John Herrick. 4255 Pacific Avenue, Suite 2 Stockton, CA 95207 jherrlaw@aol.com</p> <p>Dean Ruiz 3439 Brookside Road, Suite 210 Stockton, CA 95219 dean@hpllp.com</p>	<p>SAN JOAQUIN COUNTY AND THE SAN JOAQUIN COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT DeeAnne M. Gillick Kurtis C. Keller Neumiller & Beardslee P.O. Box 20 Stockton, CA 95201-3020 dgillick@neumiller.com kkeller@neumiller.com (updated 09/04/14)</p>
<p>THE FOLLOWING ARE INTERESTED PARTIES WHO PARTICIPATED BY POLICY STATEMENT ONLY. <u>IT IS NOT NECESSARY</u> TO SERVE THEM WITH WRITTEN TESTIMONY, EXHIBITS AND OTHER DOCUMENTS</p>	
<p>SAN JOAQUIN COUNTY FARM BUREAU Bruce Blodgett 3290 North Ad Art Road Stockton, CA 95215-2296 director@sjfb.org</p>	

INTERESTED PARTIES MAILING LIST ONLY	
THE FOLLOWING ARE INTERESTED PARTIES ONLY. DO NOT SERVE THEM WITH WRITTEN TESTIMONY, EXHIBITS AND OTHER DOCUMENTS (List developed based on submitted comments on State Water Board Orders WR 2011-0005 and WR 2012-0012)	
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Mark A. Pruner Attorney-at-Law 1206 "Q" Street, Suite 1 Sacramento, CA 95811 mpruner@prunerlaw.com	Shane E. Conway McCoin Ellison, Schneider & Harris 2600 Capitol Avenue, Suite 400 Sacramento, CA 95816-5931 sec@eslawfirm.com