

Farwell Jensen, Jane@Waterboards

From: Tauriainen, Andrew@Waterboards
Sent: Saturday, January 23, 2016 11:30 PM
To: Unit, Wr_Hearing@Waterboards; Dan Kelly (dkelly@somachlaw.com); Jeanne Zolezzi; kharrigfeld@herumcrabtree.com; Janelle Krattiger; Jonathan Knapp (jonathan.knapp@sfgov.org); Rob Donlan; 'Jennifer Spaletta' (jennifer@spalettalaw.com); ngmplcs@pacbell.net; "Dante Nomellini, Jr." (dantejr@pacbell.net); McGinnis, Robin C.@DWR; rjmorat@gmail.com; Valerie Kincaid; Linda Wood (lwood@olaughlinparis.com); towater@olaughlinparis.com; Herrick, John @aol.com; Dean Ruiz (dean@hprlaw.net); Stefanie Morris (smorris@swc.org); O'Hanlon, Daniel; Akroyd, Rebecca@KMTG; Philip Williams (pwilliams@westlandswater.org); Kuenzi, Nicole@Waterboards; Farwell Jensen, Jane; Mona, Ernie@Waterboards; Buckman, Michael@Waterboards
Subject: WSID CDO Hearing BBID ACL Hearing - PT Objections to WSID Amended NOI
Attachments: wr_subpoena_harrigfeld.pdf

TO THE HEARING TEAMS AND PARTIES IN THE WSID CDO AND BBID ACL PROCEEDINGS:

The Prosecution Team objects to the Amended Notice of Intent to Appear submitted by the West Side Irrigation District (WSID) on January 19, 2015. WSID's Amended Notice of Intent to Appear lists Greg Young and Karna Harrigfeld, neither of whom were on WSID's original Notice of Intent to Appear in the WSID CDO matter. This is the first indication at any point in either the WSID CDO proceeding or the BBID ACL proceeding that WSID seeks to call Mr. Young or Ms. Harrigfeld as witnesses. The deadline for submitting the WSID CDO Notice of Intent to Appear was October 2, 2015. As a general matter, the Hearing Team should not allow any party to so blatantly disregard Hearing Notice deadlines.

Objection to Greg Young

The Prosecution Team specifically objects to the addition of Greg Young because it appears that WSID seeks to add Mr. Young for the sole purpose of providing more time for his direct testimony. Mr. Young has been listed as a BBID witness in the BBID ACL proceeding since October 22, 2015. WSID has not submitted any testimony or exhibits for Mr. Young. Instead, WSID claims in its January 19 cover letter to have reached an agreement regarding sharing Mr. Young's testimony with BBID, and also claims to have a general coordination agreement with BBID, CDWA and SDWA regarding submittal of exhibits offered by any of those parties. If those parties have agreed to coordinate their witnesses and evidence, they should be required to coordinate their direct testimony and cross examination time, and be together subject to the same time limits imposed on the Prosecution Team or any of the other party groups. It would be prejudicial to the Prosecution Team and the other party groups to allow WSID, BBID, SDWA and CDWA others to expand witness examination time by agreeing to share witnesses and exhibits without also sharing time limits.

The Prosecution Team respectfully requests that the Hearing Team require WSID, BBID, SDWA and CDWA to coordinate their direct and cross examination time, and limit that time to the amount granted to the Prosecution team and any other party group. In the alternative, the Prosecution Team requests that the Hearing Team deny WSID's request to add Mr. Young as a witness. WSID would be able to elicit testimony from Mr. Young on cross examination, if so desired.

Objection to Karna Harrigfeld

The Prosecution Team specifically objects to the addition of Karna Harrigfeld because the late addition seems to be aimed squarely at preventing the Prosecution Team from conducting effective discovery. Ms. Harrigfeld is an attorney at Herum\Crabtree\Suntag, and also apparently serves as WSID's general counsel. It is highly unusual for a party to place its attorney on the witness stand in a contested proceeding. Ms. Harrigfeld's proposed testimony covers a wide

range of topics, including WSID's jurisdictional area, facilities, water right and operations. Government Code section 11513, subdivision (b), provides that parties may cross examine opposing witnesses on any relevant topic, whether or not that topic was part of the direct testimony. Moreover, when a party places its attorney on the witness stand, that party waives the attorney-client communication privilege, and the attorney waives the work product privilege where necessary to allow other parties to effectively prepare cross-examination. (*Handgards, Inc. v. Johnson & Johnson* (1976) 413 F.Supp. 926, 929-931.) Had WSID listed Ms. Harrigfeld as a witness in a timely manner, the Prosecution Team certainly would have sought discovery of her records, and likely sought deposition. At this late date, the Prosecution Team is severely prejudiced in its ability to prepare effective rebuttal or cross-examination of Ms. Harrigfeld.

The Prosecution Team respectfully request that the Hearing Team deny WSID's request to add Ms. Harrigfeld as a witness, and that the Hearing Team strike Ms. Harrigfeld's proposed testimony and referenced exhibits from WSID's proposed exhibits. In the meantime, the Prosecution Team has no choice but to serve the attached Subpoena *duces tecum* on Ms. Harrigfeld and WSID via this message. The Subpoena provides WSID ten working days to disclose the responsive documents, which is exceedingly fair given the rapidly approaching hearing date.

This message is served to the Hearing Team and the Parties in the BBID and WSID Service Lists.

Andrew Tauriainen, Attorney III
State Water Resources Control Board
Office of Enforcement
1001 I Street, 16th Floor
Sacramento, CA 95814
tel: (916) 341-5445
fax: (916)341-5896
atauriainen@waterboards.ca.gov

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BEFORE THE STATE WATER RESOURCES CONTROL BOARD OF THE STATE OF CALIFORNIA

ATTORNEY OR PARTY WITHOUT ATTORNEY REQUESTING SUBPOENA (name, address, and telephone no.): Andrew Tauriainen, SBN 214837 SWRCB Office of Enforcement 1001 I Street, 16th Floor Sacramento, CA 95814 (916) 341-5445	FOR STATE WATER BOARD USE ONLY				
REPRESENTING: Division of Water Rights Prosecution Team					
TITLE OF THE PROCEEDING: <p align="center"><i>In re: the Matter of Draft Cease and Desist Order Against The West Side Irrigation District</i></p>					
<table style="width:100%; border: none;"> <tr> <td style="width:50%; border: none;"><input type="checkbox"/> SUBPOENA</td> <td style="width:50%; border: none;"><input type="checkbox"/> RE HEARING</td> </tr> <tr> <td style="border: none;"><input checked="" type="checkbox"/> SUBPOENA DUCES TECUM</td> <td style="border: none;"><input type="checkbox"/> RE DEPOSITION</td> </tr> </table>		<input type="checkbox"/> SUBPOENA	<input type="checkbox"/> RE HEARING	<input checked="" type="checkbox"/> SUBPOENA DUCES TECUM	<input type="checkbox"/> RE DEPOSITION
<input type="checkbox"/> SUBPOENA	<input type="checkbox"/> RE HEARING				
<input checked="" type="checkbox"/> SUBPOENA DUCES TECUM	<input type="checkbox"/> RE DEPOSITION				

THE PEOPLE OF THE STATE OF CALIFORNIA, TO (name): **Karna E. Harrigfeld & West Side Irrig. Dist.**

1. YOU ARE ORDERED TO APPEAR AS A WITNESS in this proceeding as follows unless you make special agreement with the person named in item 3:

a. Date: February 5, 2015	Time: 5:00 p.m.
b. Address: Via electronic submittal (see attached Addendum)	

2. AND YOU ARE:

- a. Ordered to appear in person. (Wat. Code, § 1080; Gov. Code, § 11450.10; Cal. Code Regs., tit. 23, § 649.6(a).)
- b. Not required to appear in person if you produce the records described in the accompanying affidavit in compliance with Evidence Code sections 1560 and 1561. (Wat. Code, § 1080; Gov. Code, § 11450.10(b); Cal. Code Regs., tit. 23, § 649.6(a).)
- c. Ordered to appear in person and to produce the records described in the accompanying affidavit. The personal attendance of the custodian or other qualified witness and the production of the original records is required by this subpoena. The procedure authorized by subdivision (b) of section 1560, and sections 1561 and 1562, of the Evidence Code will not be deemed sufficient compliance with this subpoena. (Wat. Code, § 1080; Gov. Code, § 11450.10; Cal. Code Regs., tit. 23, § 649.6(a).)

3. IF YOU HAVE ANY QUESTIONS ABOUT WITNESS FEES OR THE TIME OR DATE FOR YOU TO APPEAR, OR IF YOU WANT TO BE CERTAIN THAT YOUR PRESENCE IS REQUIRED, CONTACT THE FOLLOWING PERSON BEFORE THE DATE ON WHICH YOU ARE TO APPEAR:

a. Name: Andrew Tauriainen	b. Telephone number: (916) 341-5445
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(Gov. Code, § 11450.20(a); Code Civ. Proc., § 1985.2.)

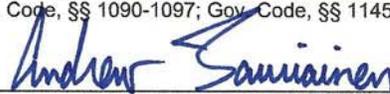
4. WITNESS FEES: You are entitled to witness fees and mileage actually traveled, both ways, as provided by law. Request them from the person who serves this subpoena or from the person named in item 3. (Wat. Code, §§ 1081, 1083, 1084; Gov. Code, §§ 11450.40, 68070 et seq.; Code Civ. Proc., §§ 1986.5, 2065.)

5. If you object to the terms of this subpoena, you may file a motion for a protective order including a motion to quash with the hearing officer assigned to your case. Motions must be made within a reasonable period after receipt of the subpoena, and shall be made with written notice to all parties, with proof of service upon all parties attached. In response to your motion, the hearing officer may make an order quashing the subpoena entirely, modifying it, or directing compliance with it, or may make any order needed to protect the parties or witnesses from unreasonable or oppressive demands, including unreasonable violations of the right to privacy. (Gov. Code, § 11450.30.) (Send motions to: The State Water Resources Control Board, Office of Chief Counsel, P.O. Box 100, Sacramento, CA 95812-0100.)

DISOBEDIENCE OF THIS SUBPOENA MAY CAUSE YOU TO BE LIABLE FOR CONTEMPT AND OTHER PENALTIES PROVIDED BY LAW

(Wat. Code, §§ 1090-1097; Gov. Code, §§ 11450.20(b), 11455.10-11455.20.)

Dated: January 23, 2015


(signature)

Name: Andrew Tauriainen

Title: Attorney for Prosecution Team



Unless issued by an attorney pursuant to Code of Civil Procedure, Section 1985, subdivision (c), the original subpoena is embossed with this seal.

(See reverse for Endorsement on Subpoena, if used, and Proof of Service)

PROOF OF SERVICE OF SUBPOENA

(Gov. Code, § 11440.20; Code Civ. Proc., §§ 1987, 1987.5, 1988, 1989, 2015.3, 2015.5.)

1. I served this subpoena subpoena duces tecum and supporting affidavit by:

personally delivering a copy to the person served as follows:

a. Person served (name):	b. Date of delivery:
c. Address where served:	d. Time of delivery:
e. Witness fees and mileage both ways (check one): (1) <input type="checkbox"/> were paid. Amount: \$ _____ (2) <input type="checkbox"/> were not paid. (3) <input type="checkbox"/> were tendered to the witness's public entity employer as required by Government Code § 68097.2. The amount tendered was \$ _____	f. Fees for service. Amount: \$ _____

- delivering true copies thereof by certified mail, return receipt requested, to the address as shown below.
 delivering true copies thereof enclosed in a sealed envelope to a messenger for immediate personal delivery to the address as shown below.

Address where served:
Served via electronic mail to the attached Service List per the Hearing Notice procedures

2. I certify that I received this subpoena subpoena duces tecum for service on _____ Date

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on:
 Date 1/23/16 at (place) Sacramento, California Signature Andrew Saurainen

(For California sheriff, marshal, or constable use only)
 I certify that the foregoing is true and correct and that this certificate is executed on:
 Date _____ at (place) _____, California Signature _____

NOTE: IF THIS SUBPOENA IS ISSUED IN CONNECTION WITH A HEARING IN AN ADJUDICATIVE PROCEEDING UNDER GOVERNMENT CODE § 11400 ET SEQ., THE ATTORNEY OR PARTY WITHOUT AN ATTORNEY REQUESTING THIS SUBPOENA MUST PROVIDE A COPY OF THE SUBPOENA TO EVERY PARTY IN THE HEARING, AND FILE A COPY WITH THE STATE WATER RESOURCES CONTROL BOARD. THE COPY PROVIDED TO THE STATE WATER RESOURCES CONTROL BOARD MUST BE ACCOMPANIED BY A CERTIFICATE OF SERVICE LISTING THE NAMES AND ADDRESSES OF PARTIES WHO WERE PROVIDED COPIES IN ACCORDANCE WITH GOVERNMENT CODE § 11440.20. (Gov. Code, § 11440.20; Cal. Code Regs., tit. 23, § 648.4(c).) (Send to: The State Water Resources Control Board, Office of Chief Counsel, P.O. Box 100, Sacramento, CA 95812-0100.)

ENDORSEMENT ON SUBPOENA IN A PROCEEDING OTHER THAN AN ADJUDICATIVE PROCEEDING

Pursuant to Water Code §1086 and upon affidavit of _____ (copy attached) showing that the testimony of the witness ordered by the subpoena to appear is material and necessary to this proceeding, it is required that said witness attend this proceeding.

Dated: _____ (signature) _____

Name: _____

Title: _____
 State Water Resources Control Board

NOTE: This ENDORSEMENT is required if the subpoena is in connection with a proceeding other than a hearing under Government Code § 11400 and the witness is being compelled to testify at a location that is both out of the witness's county of residence and 150 miles or more from the witness's place of residence. (Wat. Code, § 1086; Cal. Code Regs., tit. 23, § 649.6(c).)

1 ANDREW TAURIAINEN, SBN 214837
OFFICE OF ENFORCEMENT
2 STATE WATER RESOURCES CONTROL BOARD
1001 I Street, 16th Floor
3 Sacramento, California 95812-0100
Telephone: (916) 341-5445
4 Facsimile: (916) 341-5896
E-mail: andrew.tauriainen@waterboards.ca.gov

5
6 Attorney for the Division of Water Rights Prosecution Team

7 BEFORE THE STATE WATER RESOURCES CONTROL BOARD

8 STATE OF CALIFORNIA

9
10 In the Matter of:

11 DRAFT CEASE AND DESIST ORDER
12 AGAINST THE WEST SIDE IRRIGATION
DISTRICT

)
) ADDENDUM TO SUBPOENA *DUCES*
TECUM

) California Water Code § 1080; California
) Government Code § 11450.10; Cal. Code
) Regs., tit. 23, § 649.6(a)
)
)
)

13
14
15
16 TO: **Karna Harrigfeld**
Herum\Crabtree\Suntag
5757 Pacific Ave., Suite 222
Stockton, CA 95207
kharrigfeld@herumcrabtree.com

17
18
19 **NOTICE:**

- 20 (X) You are served as an individual.
21 () You are served as (or on behalf of) the person
22 doing business under the fictitious name
23 of _____.

24 (X) You are served on behalf of: The West Side Irrigation District

25 Pursuant to California Water Code section 1080, California Government Code section 11450.10,
26 and California Code of Regulations, title 23, section 649.6, subdivision (a):

27 **I. SUBPOENA FOR RECORDS AND DOCUMENTS**

28 **KARNA E. HARRIGFELD AND THE WEST SIDE IRRIGATION DISTRICT ARE**

29 **COMMANDED** to produce the papers, books, records, and documents that are in HARRIGFELD's

1 and/or WSID's possession or under HARRIGFELD's and/or WSID's control, as described below
2 and in connection with the above-titled proceeding, by **5:00pm, February 5, 2016**. Please send
3 the documents to: Andrew Tauriainen, Staff Counsel III, Office of Enforcement, State Water
4 Resources Control Board, 1001 I Street, 16th Floor, Sacramento, California 95814. You may email
5 electronic records to Andrew.Tauriainen@waterboards.ca.gov, or deliver all records via mail or
6 courier on a suitable electronic storage device, or make electronic records available to download
7 via the Internet.

8 WSID and/or HARRIGFELD may seek the advice of an attorney in any matter connected
9 with this subpoena, and should consult its attorney promptly so that any problems concerning the
10 production of documents may be resolved within the time required by this Subpoena. Failure to
11 comply with the commands of this Subpoena will subject WSID and/or HARRIGFELD to the
12 proceedings and penalties provided by law.

13 **A. DEFINITIONS**

14 The capitalized terms listed below, as used in this Addendum to Subpoena *duces tecum*,
15 are defined as follows:

16 1. The terms "THE WEST SIDE IRRIGATION DISTRICT" "WEST SIDE" and "WSID" mean
17 The West Side Irrigation District, an Irrigation District formed pursuant to Division 11 of the
18 California Water Code, and anyone working on its behalf, including but not limited to, its officers,
19 employees, agents, contractors, consultants, and representatives.

20 2. The term "HARRIGFELD" means Karna E. Harrigfeld, General Counsel for WSID, and any
21 partners or shareholders or attorneys of the law firm Herum\Crabtree\Suntag, headquartered in
22 Stockton, California.

23 3. The terms "YOU" or "YOUR" mean HARRIGFELD and/or WSID.

24 4. The terms "COMMUNICATION" or "COMMUNICATIONS" mean any occurrence whereby
25 data, expressions, facts, opinions, thoughts, or other information of any kind is transmitted in any
26 form including, but not limited to, any conversation, correspondence, discussion, electronic mail,
27 meeting, memorandum, message, note, or posting or other display on the Internet or the World
28 Wide Web. These terms include, but are not limited to, COMMUNICATIONS which may contain
29 attorney-client communications and/or attorney work product.

1 5. The terms "RELATING TO" or "RELATE TO" shall be construed in the broadest possible
2 sense and shall mean, without limitation, pertaining to, regarding, concerning, comprising,
3 constituting, in connection with, reflecting, respecting, referring to, stating, describing, recording,
4 noting, embodying, containing, mentioning, studying, analyzing, discussing or evaluating.

5 6. The terms "DOCUMENT" or "DOCUMENTS" encompass all documents, things, property
6 and/or electronic materials within the scope of section 2031.010 of the California Code of Civil
7 Procedure, and includes all writings as defined in section 250 of the California Evidence Code,
8 and shall include, but not be limited to, any kind of written, graphic or recorded matter, however
9 produced or reproduced, of any kind or description, whether sent or received or neither, including
10 originals, copies and drafts and both sides thereof, and including but not limited to paper, books,
11 letters, photographs, posters, objects, tangible things, correspondence, telegrams, cables,
12 facsimiles, telex messages, confirmations, account statements, receipts, billing statements,
13 memoranda, legal memoranda, notes, notations, work papers, transcripts, minutes, reports, and
14 recordings of telephone or other conversations, or other conversations, or in conferences or other
15 meetings, affidavits, statements, opinions, reports, studies, analysis, evaluations, financial
16 statements, prospectuses, circulars, certificates, press releases, annual reports, quarterly reports,
17 magazine or newspaper articles, manuals, contracts, agreements, statistical records, journals,
18 desk calendars, appointment books, diaries, lists, tabulations, summaries, sound recordings,
19 computer printouts, data processing input and output, electronic mail, all records of
20 communications recorded or encoded onto magnetic or computer disks, diskettes, audio and
21 video tapes or any other media, all records kept by electronic, photographic, or mechanical
22 means, and things similar to any of the foregoing, however denominated, dated, produced,
23 generated or received. These terms include, but are not limited to, DOCUMENTS which may
24 contain attorney-client communications and/or attorney work product.

25 7. The term "STATE BOARD" means the State Water Resources Control Board.

26 8. The terms "CITY OF TRACY" and "TRACY" mean the City of Tracy in San Joaquin
27 County, California, and anyone working on its behalf, including but not limited to, its City Council,
28 officers, employees, agents, contractors, consultants, and representatives.

29 9. The term "WASTEWATER" means wastewater treated at and discharged into Old River in

1 San Joaquin County from the CITY OF TRACY's wastewater treatment plant (WWTP) operated
2 pursuant to Central Valley Regional Water Quality Control Board Order R5-2012-0115-01 (NPDES
3 No. CA0079154).

4 10. The terms "DIVERT" or "DIVERSION" mean any water taken by WSID from Old River in
5 San Joaquin County at the Point of Diversion specified in Water Right License 1381 (Application
6 301), or from any point of diversion on any body of water, under any claim of right and through any
7 means.

8 11. The term "DISCHARGE" means the tail water or runoff collected from irrigated fields within
9 WSID or adjoining properties and discharged into the Old River in San Joaquin County or into any
10 connected body of water (e.g., the Bethany Drain), except as specifically referring to the discharge
11 of WASTEWATER from the CITY OF TRACY's WWTP.

12 12. The terms "AND" and "OR" have both conjunctive and disjunctive meanings.

13 13. The term "DRAFT CDO" means the Draft Cease and Desist Order Regarding
14 Unauthorized Diversions or Threatened Unauthorized Diversions of Water from Old River in San
15 Joaquin County (Enforcement Action ENF01949) issued against WSID by the Assistant Deputy
16 Director, Division of Water Rights, on July 16, 2015.¹

17 14. The term "2014 AGREEMENT" means the Wastewater Revocable License Agreement
18 between the CITY OF TRACY and WSID authorized by the CITY OF TRACY on or around May 6,
19 2014, further described in paragraph 8 of the DRAFT CDO.

20 15. The term "2015 AGREEMENT" means the Wastewater Revocable License Agreement
21 between the CITY OF TRACY and WSID authorized by the CITY OF TRACY on or around March
22 3, 2015, further described in paragraph 14 of the DRAFT CDO.

23 16. All references to a "YEAR" refer to a calendar year.

24 17. The term "APRIL 23 NOTICE" means the Notice of Unavailability of Water and Immediate
25 Curtailment For Those Diverting Water in the San Joaquin River Watershed With A Post-1914

26
27 ¹ Available at
28 http://www.waterboards.ca.gov/waterrights/water_issues/programs/hearings/westside_irrigation_district/docs/wsid_draftcdo_071615.pdf.

1 Appropriate Right issued on or around April 23, 2015.²

2 18. The term "MAY 1 NOTICE" means the Notice of Unavailability of Water and Immediate
3 Curtailment For Those Diverting Water in the Sacramento River Watershed With A Post-1914
4 Appropriate Right, issued on or around May 1, 2015.³

5 19. The term "JUNE 12 NOTICE" means the Notice of Unavailability of Water and Need for
6 Immediate Curtailment For Those Diverting Water in the Sacramento-San Joaquin Watersheds
7 And Delta With A Pre-1914 Appropriate Claim Commencing During Or After 1903, issued on or
8 around June 12, 2015.⁴

9 20. Definitions for industry or trade terms contained herein are to be construed broadly.
10 Where the industry or trade definition set forth herein does not coincide precisely with YOUR
11 definition, the question, inquiry or production request should be responded to or answered by
12 using the definition that YOU apply and/or recognize in YOUR usage of the term, and YOUR
13 should further document YOUR definition in the response. Non-industry or non-trade definitions
14 should be applied as defined herein.

15 **B. INSTRUCTIONS**

16 1. Unless otherwise indicated, the time period covered by this subpoena is from **January 1,**
17 **2014 to up to five days before YOUR full compliance with this subpoena.** Any documents
18 RELATING TO this time period are to be produced, regardless of whether the documents came
19 into existence before or during this period.

20 2. YOUR response to the subpoena should include a declaration or affidavit. It should state
21 that a diligent search for all requested DOCUMENTS has been conducted and that the affiant or
22 declarant was in charge of the search or otherwise monitored and reviewed the search sufficiently
23 to be able to represent under oath that such a search was conducted. It should be signed under
24 oath by the person most knowledgeable about the DOCUMENTS and YOUR efforts to comply

25 _____
26 ² Available at http://www.waterboards.ca.gov/waterrights/water_issues/programs/drought/docs/sjrg_2015_curtail.pdf

27 ³ Available at
http://www.waterboards.ca.gov/waterrights/water_issues/programs/drought/docs/sac2015_post14curtail.pdf

28 ⁴ Available at
http://www.waterboards.ca.gov/waterrights/water_issues/programs/drought/docs/pre14curtailmentjun2015.pdf

1 with the subpoena. If different people are the most knowledgeable about portions of the search
2 (e.g., one person is most knowledgeable about DOCUMENTS contained in computer media and a
3 different person is most knowledge about DOCUMENTS contained on paper) each should sign an
4 affidavit or declaration identifying the category in the request for DOCUMENTS for which that
5 person is the most knowledgeable.

6 3. Unless otherwise indicated, for any DOCUMENT stored in a computer, including all
7 electronic mail messages, YOU should produce the DOCUMENT in the original electronic file
8 format in which it was created (e.g., Microsoft email should be provided in its original format,
9 which would have the .pst suffix, not in a tif file; spreadsheets should be in their original file form,
10 such as an Excel file and word-processed DOCUMENTS should be in their original file format,
11 such as a Word or WordPerfect file), together with instructions and all other materials necessary
12 to use or interpret the data. Electronic mail messages should be provided, even if only available
13 on backup or archive tapes or disks. Computer media should be accompanied by (a) an
14 identification of the generally available software needed to open and view the DOCUMENTS or (b)
15 a copy of the software needed to open and view the DOCUMENT. Note, however, that if a print-
16 out from a computer DOCUMENT is a non-identical copy of the electronic form in which it was
17 created (non-identical by way of example but not limitation, because it has a signature,
18 handwritten notation, or other mark or attachment not included in the computer DOCUMENT),
19 both the electronic form in which the DOCUMENT was created and the original print-out should be
20 produced.

21 4. For each DOCUMENT contained in an audio or video medium, YOU should provide the
22 tape, disk, or other device from which the audio or video can be played and the transcript of the
23 DOCUMENT.

24 5. For all DOCUMENTS for which YOU do not produce in the original, as defined in Evidence
25 Code section 255, YOU may submit copies (black and white copies if the original was in black and
26 white, color copies if the original was in color, and, if the original was in electronic format, in the
27 same electronic medium as the original) in lieu of original DOCUMENTS provided that such
28 copies are accompanied by an affidavit of an officer of WSID stating that the copies of all types of
29 DOCUMENTS are true, correct, and complete copies of the original DOCUMENTS. If there is in

1 YOUR possession, custody or control no original, but only a copy or photographic record thereof,
2 then YOU should produce a true and legible copy of each such DOCUMENT. The accompanying
3 affidavit should state that the DOCUMENT is only a copy or photographic record and not the
4 original.

5 6. If a DOCUMENT is responsive to this subpoena and is in YOUR control, but is not in
6 YOUR possession or custody, in addition to obtaining and producing the DOCUMENT, identify the
7 person who had possession or custody of the DOCUMENT, their telephone number and current
8 business and residence addresses.

9 7. If any DOCUMENT subpoenaed is no longer in YOUR possession, custody, control, or
10 care, YOU should provide a written statement identifying the DOCUMENT with specificity, stating
11 whether it is lost or missing, has been destroyed, has been transferred to others, or has otherwise
12 been disposed of. The written statement should also identify the person who disposed of the
13 DOCUMENT, explain the circumstances and authorization for the disposition and the approximate
14 date of the disposition of the DOCUMENT. If there are no DOCUMENTS responsive to a
15 document request, as to each such document request, YOU should include a statement to that
16 effect in the accompanying declaration or affidavit.

17 8. DOCUMENTS provided in response to this subpoena should be complete and unredacted,
18 submitted as found in YOUR files (e.g., DOCUMENTS that in their original condition were stapled,
19 clipped, attached as a "post-it," or otherwise fastened together shall be produced in the same
20 form).

21 9. Each DOCUMENT produced pursuant to this subpoena should be identified according to
22 the category in the subpoena to which it is responsive. In lieu of indicating on each DOCUMENT
23 the category to which it is responsive, on the date set for production, YOU may instead provide an
24 index if YOU provide it in both paper and in electronic form (such as a computerized spreadsheet
25 in Excel or a Word or WordPerfect document set up in a table format) of all DOCUMENTS YOU
26 produce, as long as this index shows by document control number the request(s) to which each
27 DOCUMENT or group of DOCUMENTS is responsive. Responsive DOCUMENTS from each
28 person's files should be produced together, in one box or in consecutive boxes, or on one disk or
29 consecutive disks. Mark each page of a paper DOCUMENT and each tangible thing containing

1 audio, video, computer, or other electronic DOCUMENTS (e.g. cassette, disk, tape or CD) with
2 corporate identification and consecutive document control numbers (e.g., S.I.. 00001, S.I. CD 001,
3 S.I. audio tape 001). Number each box of DOCUMENTS produced and mark each with the
4 name(s) of the person(s) whose files are contained therein, the requests(s) to which they are
5 responsive, and the document control numbers contained therein.

6 10. For data produced in spreadsheets or tables, include in the declaration or affidavit the
7 identification of the fields and codes and a description of the information contained in each coded
8 field.

9 11. The document requests contained in this subpoena shall be deemed to include a request
10 for all relevant DOCUMENTS in the personal files, including but not limited to files contained on
11 laptops, handheld devices, home computers and home files of all YOUR officers, employees,
12 accountants, agents and representatives, including sales agents who are independent
13 contractors, and attorneys.

14 12. YOU are required to produce all DOCUMENTS responsive to this Subpoena *duces tecum*,
15 regardless of any claim of attorney-client communication and/or attorney work product privilege.

16 13. Whenever necessary to bring within the scope of this subpoena DOCUMENTS that might
17 otherwise be construed as outside its scope, the use of the verb in any tense shall be construed
18 as the use of that verb in all other tenses, and the singular shall include the plural, and vice versa,
19 so as to make this subpoena broadly inclusive.

20 14. YOU are not required to produce DOCUMENTS previously produced in response to the
21 Subpoena *duces tecum* served by the Prosecution Team on October 29, 2015. However, you are
22 required to produce DOCUMENTS otherwise responsive to the October 29, 2015, Subpoena
23 *duces tecum* but which were withheld under any claim of attorney-client communication and/or
24 attorney work product privilege.

25 15. YOU are not required to produce DOCUMENTS previously produced by the Division of
26 Water Rights Prosecution Team and/or the California Department of Water Resources, in
27 response to WSID's California Public Records Act Requests served during 2015 and/or the
28 Document Requests accompanying WSID's Deposition Notices in the above-referenced action.

29 **C. DOCUMENTS TO BE PRODUCED**

1 This subpoena commands production of the original of each and every DOCUMENT now
2 or at any time in the possession, custody or control of YOU without regard to the person(s) by
3 whom or for whom said DOCUMENTS were prepared, including, but not limited to, all
4 DOCUMENTS in the personal, business, or other files of all present or former officers, directors,
5 trustees, agents, employees, attorneys, and accountants of WSID, which RELATES TO any of the
6 following subjects:

7 1. All DOCUMENTS and COMMUNICATIONS RELATING TO the 2014 AGREEMENT.

8 2. All DOCUMENTS and COMMUNICATIONS RELATING TO WSID'S Commencement
9 Notice or Commencement Notices pursuant to the 2014 AGREEMENT, as the term
10 "Commencement Notice" is defined in the 2014 AGREEMENT.

11 3. All DOCUMENTS and COMMUNICATIONS RELATING TO the coordination of wastewater
12 amounts available for diversion on a weekly basis between the CITY and WSID, and the CITY's
13 monthly reports to WSID regarding the amount discharged pursuant the 2014 AGREEMENT.

14 4. All DOCUMENTS and COMMUNICATIONS RELATING TO the 2015 AGREEMENT.

15 5. All DOCUMENTS and COMMUNICATIONS RELATING TO WSID'S Commencement
16 Notice or Commencement Notices pursuant to the 2015 AGREEMENT, as the term
17 "Commencement Notice" is defined in the 2015 AGREEMENT.

18 6. All DOCUMENTS and COMMUNICATIONS RELATING TO the coordination of wastewater
19 amounts available for diversion on a weekly basis between the CITY and WSID, and the CITY's
20 monthly reports to WSID regarding the amount discharged pursuant the 2015 AGREEMENT.

21 7. All DOCUMENTS and COMMUNICATIONS RELATING TO the daily and monthly amounts
22 of water DIVERTED and the claimed basis of right allowing for the DIVERSIONS from July 1,
23 2014, through October 31, 2014, and April 1, 2015, through October 31, 2015, including the
24 average rate of DIVERSION for each day, the total amount of water DIVERTED for each day, the
25 total amount of water DIVERTED in each month, the maximum rate of DIVERSION for each
26 month, and the method or methods used to determine the DIVERSION amounts reported.

27 8. All DOCUMENTS and COMMUNICATIONS RELATING TO the identification and location
28 of the point of DIVERSION (POD) and place of use for the water right being claimed, the purpose
29 of use, and the place of use being served with acreage and crop type, if applicable, including: all

1 DOCUMENTS and COMMUNICATIONS supporting the type of water right claimed, including the
2 property patent date and patent map, if riparian right; and, if claiming a pre-1914 right, all
3 DOCUMENTS AND COMMUNICATIONS supporting the claimed pre-1914 right, including, but not
4 limited to, a copy of the notice filed with the county, a copy of property deed, and all other
5 information supporting the pre-1914 right pertaining to initial diversion and continued beneficial
6 use of water.

7 9. All DOCUMENTS and COMMUNICATIONS RELATING TO WSID's system or systems for
8 collecting tailwater or other runoff from property within WSID, including the identification of any
9 drainage canals (e.g. Bethany Drain) used to convey any irrigation tailwater or other runoff from
10 property within WSID.

11 10. All DOCUMENTS and COMMUNICATIONS RELATING TO the identification and locations
12 of all lands, whether within WSID or outside of WSID's boundaries, that contribute irrigation
13 tailwater or other runoff into any drainage canals (e.g. Bethany Drain) used to convey any
14 irrigation tailwater or other runoff from property within WSID.

15 11. All DOCUMENTS and COMMUNICATIONS RELATING TO the identification and location
16 of all the point(s) of DISCHARGE of WSID's tile drains or any other irrigation tailwater or runoff
17 collection means into any body of water including, but not limited to, the Old River Intake Channel
18 above WSID's Pumping Plant, Old River, and Tom Paine Slough.

19 12. All DOCUMENTS and COMMUNICATIONS RELATING TO the daily DISCHARGE
20 quantities at each point of DISCHARGE identified in response to Paragraph I.C.11, from May 1,
21 2014, through October 31, 2014, and April 1, 2015, through October 31, 2015, including the
22 relative DISCHARGE quantities at each point of DISCHARGE arising from irrigation tailwater or
23 other runoff collected from property within WSID and that collected from lands outside of WSID's
24 boundaries.

25 13. All DOCUMENTS and COMMUNICATIONS RELATING TO the method or methods used
26 to determine the quantity of DISCHARGE at each point of DISCHARGE identified in response to
27 Paragraph I.C.11, the method or methods used to determine the relative DISCHARGE quantities
28 at each point of DISCHARGE arising from irrigation tailwater or other runoff collected from
29 property within WSID and that collected from lands outside of WSID's boundaries.

1 14. All DOCUMENTS and COMMUNICATIONS RELATING TO the DIVERSION amounts and
2 corresponding DISCHARGE amounts during any period during either 2014 or 2015 in which WSID
3 claims to have DIVERTED or to be DIVERTING DISCHARGE water, including the method or
4 methods used to determine the quantity of DISCHARGE and DIVERSION during such periods.

5 15. All DOCUMENTS and COMMUNICATIONS RELATING TO any contracts or agreements
6 that concern supplying water to WSID in effect between May 1, 2014, and October 31, 2015, in
7 addition to the 2014 Agreement and 2015 Agreement.

8 16. All DOCUMENTS and COMMUNICATIONS RELATING TO WSID's obligation, ability,
9 and/or duty to comply with any curtailment orders, curtailment notices, or notices of water
10 unavailability issued or proposed to be issued by the STATE BOARD or STATE BOARD staff
11 during 2014 or 2015.

12 17. All DOCUMENTS and COMMUNICATIONS RELATING TO the STATE BOARD Division of
13 Water Rights drought water availability supply and demand analyses or curtailment analyses
14 conducted during 2015.

15 18. All DOCUMENTS and COMMUNICATIONS RELATING TO the availability of water during
16 2015 to serve WSID's water right License 1381 or any other right claimed by WSID as a basis for
17 DIVERSION during 2015.

18 19. All DOCUMENTS and COMMUNICATIONS RELATING TO the APRIL 23 NOTICE.

19 20. All DOCUMENTS and COMMUNICATIONS RELATING TO WSID's obligation, ability,
20 and/or duty to comply with the APRIL 23 NOTICE.

21 21. All DOCUMENTS and COMMUNICATIONS RELATING TO WSID's legal right or lack of
22 legal right to continue DIVERSION and/or use of water following the APRIL 23 NOTICE.

23 22. All DOCUMENTS and COMMUNICATIONS RELATING TO the dates, rates and/or
24 quantities of WSID's DIVERSION and/or use of water, under any claim of right, following the
25 APRIL 23 NOTICE.

26 23. All DOCUMENTS and COMMUNICATIONS RELATING TO the MAY 1 NOTICE.

27 24. All DOCUMENTS and COMMUNICATIONS RELATING TO WSID's obligation, ability,
28 and/or duty to comply with the MAY 1 NOTICE.

1 25. All DOCUMENTS and COMMUNICATIONS RELATING TO WSID's legal right or lack of
2 legal right to continue DIVERSION and/or use of water following the MAY 1 NOTICE.

3 26. All DOCUMENTS and COMMUNICATIONS RELATING TO the dates, rates and/or
4 quantities of WSID's DIVERSION and/or use of water, under any claim of right including, but not
5 limited to, WSID's License 1381, following the MAY 1 NOTICE.

6 27. All DOCUMENTS and COMMUNICATIONS RELATING TO the JUNE 12 NOTICE.

7 28. All DOCUMENTS and COMMUNICATIONS RELATING TO WSID's obligation, ability,
8 and/or duty to comply with the JUNE 12 NOTICE.

9 29. All DOCUMENTS and COMMUNICATIONS RELATING TO WSID's legal right or lack of
10 legal right to continue DIVERSION and/or use of water following the JUNE 12 NOTICE.

11 30. All DOCUMENTS and COMMUNICATIONS RELATING TO the dates, rates and/or
12 quantities of WSID's DIVERSION and/or use of water, under any claim of right including, but not
13 limited to, the Banta-Carbona Irrigation District pre-1914 claim subject to the Agreement for
14 Temporary Pumping Right Assignment made on or around April 10, 2015, between Banta-
15 Carbona Irrigation District and WSID, following the JUNE 12 NOTICE.

16 31. All DOCUMENTS and COMMUNICATIONS RELATING TO WSID's cessation of
17 DIVERSION or use of water at any time during 2015.

18 32. All DOCUMENTS and COMMUNICATIONS RELATING TO WSID's online Curtailment
19 Certification Form submitted to the STATE BOARD on or around May 13, 2015.

20 33. All DOCUMENTS and COMMUNICATIONS RELATING TO the letter dated July 7, 2015,
21 letter from WSID counsel to Tom Howard, Executive Director of the STATE BOARD.

22 34. All DOCUMENTS and COMMUNICATIONS RELATING TO inspections conducted or
23 requested by the STATE BOARD staff and/or the Delta Watermaster or Delta Watermaster staff,
24 on or around WSID property during 2015.

25
26 Date: January 23, 2016



27
28 Andrew Tauriainen
OFFICE OF ENFORCEMENT
State Water Resources Control Board

1 ANDREW TAURIAINEN, SBN 214837
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2 STATE WATER RESOURCES CONTROL BOARD
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5

6 Attorney for the Division of Water Rights Prosecution Team

7 BEFORE THE STATE WATER RESOURCES CONTROL BOARD

8 STATE OF CALIFORNIA

9
10 In the Matter of:)
DRAFT CEASE AND DESIST ORDER) AFFIDAVIT IN SUPPORT OF SUBPOENA
AGAINST THE WEST SIDE IRRIGATION) *DUCES TECUM*
DISTRICT) California Water Code § 1080; California
11) Government Code § 11450.10; Cal. Code
12) Regs., tit. 23, § 649.6(a)
13)
14)

15
16 **I, Andrew Tauriainen, declare as follows:**

17 1. I am an attorney for the State Water Resources Control Board (State Water
18 Board), Office of Enforcement. I am counsel for the Division of Water Rights Prosecution Team in
19 the above-entitled matter. I have personal knowledge of all facts stated in this declaration and, if
20 called as a witness, could and would testify competently under oath.

21 2. The Assistant Deputy Director, Division of Water Rights, issued a draft Cease and
22 Desist Order (CDO) against The West Side Irrigation District (WSID) on July 16, 2015, alleging
23 that WSID is violating, or is threatening to violate, the prohibition set forth in Water Code section
24 1052 against the unauthorized diversion or use of water. Among other things, the CDO alleges
25 that WSID is diverting or may be threatening to divert water in excess of that available to serve
26 WSID's License 1381, without a valid basis of right.

27 3. In response to a Subpoena *duces tecum* issued by the Prosecution Team on
28 October 29, 2015, WSID provided a number of documents and records to the Prosecution Team
29 in a series of disclosures taking place from November, 2015, through January, 2016. The

1 Subpoena duces tecum filed concurrently herewith does not seek these documents, except to the
2 extent that WSID previously withheld any documents responsive to the October 29, 2015,
3 Subpoena under a claim of attorney-client communication or attorney work product privilege.

4 4. On January 19, 2016, WSID submitted, among other things, the Written Testimony
5 of Karna E. Harrigfeld (submitted as WSID Exhibit WSID0099), as part of its written testimony
6 and exhibits in the above-referenced matter. The proposed Written Testimony describes Ms.
7 Harrigfeld's role as General Counsel to WSID, and also lists Ms. Harrigfeld as an attorney of
8 record in these proceedings along with her law firm, Herum\Crabtree\Suntag, headquartered in
9 Stockton, California. Ms. Harrigfeld's proposed Written Testimony makes numerous statements
10 regarding her knowledge of WSID's jurisdictional area, facilities, water rights, operations, and
11 other matters directly relevant to the proposed CDO.

12 5. Also on January 19, 2016, WSID's attorney submitted a proposed amended Notice
13 of Intent to Appear in the WSID CDO proceedings which, for the first time, lists Ms. Harrigfeld as
14 a proposed witness. WSID's proposed amended Notice of Intent to Appear indicates that Ms.
15 Harrigfeld will testify as to "WSID Water Use."

16 6. Good cause exists for the production of the documents described in the Subpoena
17 *Duces Tecum* and Addendum, served herewith, because the documents requested concern the
18 issues identified as within the scope of Ms. Harrigfeld's proposed testimony and/or are necessary
19 for the Prosecution Team to prepare for cross-examination of Ms. Harrigfeld. Government Code
20 section 11513 governs these proceedings and provides, in relevant part, that parties may "cross-
21 examine opposing witnesses on any matter relevant to the issues, even though that matter was
22 not covered in the direct examination...." The requested documents relate to WSID's diversions
23 during 2014 and 2015, the availability of water to serve WSID during 2015, WSID's understanding
24 of its obligations to comply with water unavailability notices issued by State Water Board staff in
25 2015, and WSID's response to such notices, all of which are relevant to whether WSID is or may
26 be diverting or threatening to divert water in excess of that available to serve WSID's License
27 1381 without a valid basis of right.

28 7. The documents and information requested in the Subpoena *Duces Tecum* and
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Addendum, served herewith, are within Ms. Harrigfeld's possession and/or within her control or are within the possession and/or control of the law firm Herum\Crabtree\Suntag, as they concern matters for which Ms. Harrigfeld and/or other attorneys in her law firm may have advised WSID during 2014 and 2015.

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



Date: January 23, 2016

Andrew Tauriainen
Office of Enforcement
State Water Resources Control Board

**SERVICE LIST OF PARTICIPANTS
 BYRON-BETHANY IRRIGATION DISTRICT
 ADMINISTRATIVE CIVIL LIABILITY HEARING
 (09/02/15; Revised 09/10/15; Revised 10/06/16; Revised 10/22/15)**

<p>Division of Water Rights 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>Byron Bethany Irrigation District Daniel Kelly Somach Simmons & Dunn 500 Capitol Mall, Suite 1000, Sacramento, CA 95814 dkelly@somachlaw.com</p>
<p>Patterson Irrigation District 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>City and County of San Francisco Johnathan Knapp Office of the City Attorney 1390 Market Street, Suite 418 San Francisco, CA 94102 jonathan.knapp@sfgov.org</p> <p>Robert E. Donlan Ellison, Schneider & Harris LLP 2600 Capitol Ave, Suite 400 Sacramento, CA 95816 (916) 447-2166 red@eslawfirm.com</p>
<p>Central Delta Water Agency Jennifer Spaletta Spaletta Law PC PO Box 2660 Lodi, CA 95241 jennifer@spalettalaw.com</p> <p>Dante Nomellini and Dante Nomellini, Jr. Nomellini, Grilli & McDaniel ngmplcs@pacbell.net dantejr@pacbell.net</p>	<p>California Department of Water Resources Robin McGinnis, Attorney PO Box 942836 Sacramento, CA 94236-0001 robin.mcginnis@water.ca.gov</p>
<p>Richard Morat 2821 Berkshire Way Sacramento, CA 95864 rjmorat@gmail.com</p>	<p>San Joaquin Tributaries Authority Valeri Kincaid O’Laughlin & Paris LLP 2617 K Street, Suite 100 Sacramento, CA 95814 vkincaid@olaughlinparis.com lwood@olaughlinparis.com</p>
<p>South Delta Water Agency John Herrick, Esq. 4255 Pacific Ave., Suite 2 Stockton, CA 95207 jherrlaw@aol.com</p> <p>Dean Ruiz, Esq. Harris, Perisho & Ruiz, Attorneys at Law 3439 Brookside Road, Suite 210 Stockton, CA 95219 dean@hprlaw.net</p>	<p>State Water Contractors Stefani Morris, Attorney 1121 L Street, Suite 1050 Sacramento, CA 95814 smorris@swc.org</p>

**SERVICE LIST OF PARTICIPANTS
WEST SIDE IRRIGATION DISTRICT
CEASE AND DESIST ORDER HEARING
(October 8, 2015)**

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<p>State Water Contractors Stefani Morris, Attorney 1121 L Street, Suite 1050 Sacramento, CA 95814 smorris@swc.org</p>	<p>Westlands Water District Daniel O'Hanlon Rebecca Akroyd Kronick Moskowitz Tiedemann & Girard 400 Capitol Mall, 27th Floor Sacramento, CA 95814 dohanlon@kmtg.com rakroyd@kmtg.com</p> <p>Philip Williams of Westlands Water District pwilliams@westlandswater.org</p>
<p>South Delta Water Agency John Herrick, Esq. 4255 Pacific Ave., Suite 2 Stockton, CA 95207 jherrlaw@aol.com</p> <p>S. Dean Ruiz Harris, Perisho & Ruiz 3439 Brookside Rd, Ste. 210 Stockton, CA 95219 dean@hprlaw.net</p>	<p>Central Delta Water Agency Jennifer Spaletta Spaletta Law PC PO Box 2660 Lodi, CA 95241 jennifer@spalettalaw.com</p> <p>Dante Nomellini and Dante Nomellini, Jr. Nomellini, Grilli & McDaniel ngmplcs@pacbell.net dantejr@pacbell.net</p>
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<p>California Department of Water Resources Robin McGinnis, Attorney PO Box 942836 Sacramento, CA 94236-0001 robin.mcginis@water.ca.gov</p>	<p>Byron Bethany Irrigation District Daniel Kelly Somach Simmons & Dunn 500 Capitol Mall, Suite 1000, Sacramento, CA 95814 dkelly@somachlaw.com</p>