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A Professional Corporation
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MICHAEL E. VERGARA, ESQ. (SBN 137689)
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Sacramento, California 95814-2403
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5

6 Attorneys for Petitioner/Plaintiff BYRON-
BETHANY IRRIGATION DISTRICT
7

8 BEFORE THE
9 CALIFORNIA STATE WATER RESOURCES CONTROL BOARD
10

11 In the Matter of ENFORCEMENT ACTION
ENF01951 – ADMINISTRATIVE CIVIL
12 LIABILITY COMPLAINT REGARDING
UNAUTHORIZED DIVERSION OF WATER
13 FROM THE INTAKE CHANNEL TO THE
BANKS PUMPING PLANT (FORMERLY
14 ITALIAN SLOUGH) IN CONTRA COSTA
COUNTY
15

SWRCB Enforcement Action ENF01951

DECLARATION OF MICHAEL E.
VERGARA SUPPORTING MOTION
TO QUASH, OR ALTERNATIVELY,
MOTION FOR PROTECTIVE
ORDER

- 16 1. I, Michael E. Vergara declare:
17 2. I am an attorney at law licensed to practice before the courts of the State of
18 California. I am a shareholder with the law firm of Somach Simmons & Dunn and counsel of
19 record for Petitioner/Plaintiff Byron-Bethany Irrigation District (BBID). The following matters
20 are within my personal knowledge and, if called as a witness, I can competently testify thereto.
21 2. Attached hereto as Exhibit A is a true and correct copy of the Administrative Civil
22 Liability Complaint (ACL Complaint) issued by the State Water Resources Control Board
23 (SWRCB) in *In the Matter of Enforcement Action ENF01951 – Administrative Civil Liability*
24 *Complaint Regarding Unauthorized Diversion of Water From the Intake Channel to the Banks*
25 *Pumping Plant (Formerly Italian Slough) in Contra Costa County* (ENF01951).
26 3. Attached hereto as Exhibit B is a true and correct copy of the letter dated July 20,
27 2015 that accompanied the ACL Complaint in ENF01951.
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4. Attached hereto as Exhibit C is a true and correct copy of the subpoena duces tecum served on BBID on October 29, 2015 by the SWRCB's Office of Enforcement (Subpoena).

5. Attached hereto as Exhibit D are true and correct copies of correspondence between me and Andrew Tauriainen constituting my attempts to meet and confer with opposing counsel in a good faith effort to avoid filing this motion.

6. I am informed and believe that BBID will need to commit significant man-hours and monetary expenditure to comply with the SWRCB's broad request for documents in the Subpoena unless it is modified as requested.

I declare under penalty of perjury under the laws of the State of California that the facts recited above are true and correct. Executed this 9th day of November at Sacramento, California.

Dated: November 9, 2015

SOMACH SIMMONS & DUNN
A Professional Corporation

By: _____

Michael E. Vergara
Attorneys for Petitioner/Plaintiff BYRON-
BETHANY IRRIGATION DISTRICT

EXHIBIT A

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

DIVISION OF WATER RIGHTS

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT

In the Matter of Unauthorized Diversion by

BYRON-BETHANY IRRIGATION DISTRICT

SOURCE: Intake Channel to the Banks Pumping Plant (formerly Italian Slough)

COUNTY: Contra Costa

YOU ARE HEREBY GIVEN NOTICE THAT:

1. Byron-Bethany Irrigation District (BBID or District) is alleged to have diverted and used water in violation of California Water Code section 1052, subdivision (a), which provides that the diversion or use of water subject to Division 2 of the Water Code other than as authorized in Division 2 is a trespass.
2. Water Code section 1052, subdivision (c), provides that any person or entity committing a trespass during a period for which the Governor has issued a proclamation of a state of drought emergency may be liable in an amount not to exceed the sum of one thousand dollars (\$1,000) for each day the trespass occurs plus two thousand five hundred dollars (\$2,500) for each acre-foot of water diverted or used in excess of that diverter's rights. Water Code section 1052, subdivision (d)(2), provides that civil liability may be imposed administratively by the State Water Resources Control Board (State Water Board or Board) pursuant to Water Code section 1055.
3. Water Code section 1055, subdivision (a), provides that the Executive Director of the State Water Board may issue a complaint to any person or entity on whom Administrative Civil Liability (ACL) may be imposed. On June 5, 2012, the Executive Director delegated this authority to the Deputy Director for Water Rights. State Water Board Resolution 2012-0029 authorizes the Deputy Director for Water Rights to issue an order imposing an ACL when a complaint has been issued and no hearing has been requested within 20 days of receipt of the complaint. The Deputy Director for Water Rights has redelegated this authority to the Assistant Deputy Director for Water Rights pursuant to State Water Board Resolution 2012-0029.

ALLEGATIONS

4. On June 30, 2010, BBID submitted an Initial Statement of Water Diversion and Use (Statement), which the State Water Board, Division of Water Rights (Division) designated as Statement 021256 (S021256). Under S021256, BBID claims a pre-1914 appropriative water right to the Intake Channel to the Banks Pumping Plant, formerly Italian Slough, in Contra Costa County. The Statement also indicates that BBID diverted approximately 26,179 acre-feet (af) in 2009 for municipal and industrial and agricultural use within its boundaries.
5. On July 1, 2013, BBID submitted Supplemental Statements for S021256, for the years 2010, 2011 and 2012. BBID's Supplemental Statements each indicates that the District first put water to use in 1917, and that the purpose of use for the District's diversions is irrigation of 12,500 acres. The 2010 Supplement Statement indicates that BBID diverted 25,269 af and applied

Byron-Bethany Irrigation District

approximately 22,302 af to beneficial use. The 2011 Supplemental Statement indicates that BBID diverted 22,344 af and applied 19,779 af to beneficial use. The 2012 Supplemental Statement indicates that BBID diverted 32,167 af and applied 28,345 af to beneficial use.

6. BBID does not hold or claim any other appropriative or riparian water rights on record with the State Water Board, although S021256 indicates that BBID holds Contract No. 14-06-200-785-LTR1 with the United States Bureau of Reclamation (Reclamation). In 2014 and 2015, Reclamation's agricultural contractors in the Delta were allocated zero percent of their contract quantity (available at <http://www.usbr.gov/newsroom/newsrelease/detail.cfm?RecordID=49115> [last accessed June 30, 2015]). BBID confirmed in a public statement dated June 12, 2015, that it had received zero water supply from Reclamation in both 2014 and 2015 (available at <http://bbid.org/wp-content/uploads/2015/06/BBID-Curtailment-Response-FINAL1.pdf> [last accessed June 30, 2015].)
7. On January 17, 2014, Governor Edmund G. Brown Jr. issued Proclamation No. 1-17-2014, declaring a State of Emergency to exist in California due to severe drought conditions.
8. Also on January 17, 2014, the State Water Board issued a "Notice of Surface Water Shortage and Potential Curtailment of Water Right Diversions" (2014 Shortage Notice). The 2014 Shortage Notice alerts water right holders in critically dry watersheds that water may become unavailable to satisfy beneficial uses at junior priorities.
9. On April 25, 2014, Governor Brown issued a Proclamation of a Continued State of Emergency due to drought conditions, to strengthen the state's ability to manage water and habitat effectively in drought conditions.
10. On May 27, 2014, the State Water Board issued a "Notice of Unavailability of Water and Immediate Curtailment for Those Diverting Water in the Sacramento and San Joaquin River Watershed with a post-1914 Appropriative Right" (2014 Unavailability Notice), which notifies all holders of post-1914 appropriative water rights within the Sacramento and San Joaquin River watersheds of the lack of availability of water to serve their post-1914 water rights, with some minor exceptions for non-consumptive diversions. The 2014 Unavailability Notice did not apply to pre-1914 appropriative rights such as that claimed by BBID. The State Water Board notified the most senior right holders in stages as water became available to serve their rights, and by November 19, 2014, had notified all right holders of availability for all diversions in the Sacramento and San Joaquin River watersheds.
11. On January 23, 2015, the State Water Board issued a "Notice of Surface Water Shortage and Potential for Curtailment of Water Right Diversions for 2015" (2015 Shortage Notice). The 2015 Shortage Notice alerted water right holders in critically dry watersheds that water may become unavailable to satisfy beneficial uses at junior priorities.
12. On February 4, 2015, the State Water Board issued Order WR 2015-0002-DWR, requiring pre-1914 and riparian water right claimants representing the top 90 percent of such claimants by volume in the Sacramento and San Joaquin River watersheds and the Delta to submit information relating to their claimed water right, the monthly amounts of water diverted and the basis of right claimed for diversions in 2014, and monthly diversion information and anticipated monthly diversion information for each month starting with February, 2015, to be submitted by the 5th of each succeeding month until the drought ends.
13. BBID is subject to Order WR 2015-0002-DWR, and in response submitted information indicating that its predecessor, the Byron-Bethany Irrigation Company, recorded notice of an appropriation of water on or around May 18, 1914. Thus, BBID claims that its pre-1914 water right has a

priority date of May 18, 1914.¹

14. BBID also submitted water diversion and use information for 2014, projected monthly diversions for 2015, and actual monthly diversions through May, 2015. BBID reports that it diverted 30,204 af in 2014 and projected diversions of 25,452 af in 2015. BBID's reported actual monthly diversion amounts for January through May, 2015, are generally similar to reported diversions for the same months in prior years where such information is available. BBID's reported projected diversions are similar to the reported actual diversions for the same months in prior years where such information is available. From August 1 to October 31, 2014, BBID reports it pumped 1,573 af of water under transfer that was approved by State Water Board Order dated August 27, 2014.
15. On April 1, 2015, Governor Brown issued Executive Order B-29-15 (Executive Order) to strengthen the state's ability to manage water and habitat effectively in drought conditions and called on all Californians to redouble their efforts to conserve water. The Executive Order finds that the continuous severe drought conditions present urgent challenges across the state including water shortages for municipal water use and for agricultural production, increased wildfire activity, degraded habitat for fish and wildlife, threat of saltwater contamination, and additional water scarcity if drought conditions continue. The Executive Order confirms that the orders and provisions in the Governor's previous drought proclamations and orders, the January 17, 2014, Proclamation, April 25, 2015, Proclamation, and Executive Orders B-26-14 and B-28-14, remain in full force and effect. On April 2, 2015, the State Water Board issued another notice warning that notices of unavailability of water were likely to be issued soon.
16. On April 23, 2015, the State Water Board issued a "Notice of Unavailability of Water and Immediate Curtailment for Those Diverting Water in the San Joaquin River Watershed with a Post-1914 Appropriative Right" (April 23 Unavailability Notice), which notifies all holders of post-1914 appropriative water rights within the San Joaquin River watershed of the lack of availability of water to serve their post-1914 water rights, with some minor exceptions for non-consumptive diversions. The State Water Board issued a similar notice for post-1914 appropriative water rights within the Sacramento River watershed on May 1, 2015 (May 1 Unavailability Notice). The April 23 and May 1 Unavailability Notices do not apply to pre-1914 appropriative rights such as that claimed by BBID.
17. On June 12, 2015, the State Water Board issued a "Notice of Unavailability of Water and Need for Immediate Curtailment for Those Diverting Water in the Sacramento-San Joaquin Watersheds and Delta with a Pre-1914 Appropriative Claim Commencing During or After 1903" (June 12 Unavailability Notice), which notifies all holders of pre-1914 appropriative water rights with a priority date of 1903 and later within the Sacramento and San Joaquin River watersheds of the lack of availability of water to serve their rights, with some minor exceptions for non-consumptive uses.
18. Drought management of water rights is necessary to ensure that water to which senior water right holders are entitled is actually available to them, which requires that some water remain in most streams to satisfy senior demands at the furthest downstream point of diversion of these senior water rights. The June 12 Unavailability Notice reflects the State Water Board's determination that the existing water available in the Sacramento-San Joaquin watersheds and the Delta is insufficient to meet the demands of diverters with claims of pre-1914 appropriative rights with a priority date of 1903 and later. Continued diversion when there is no water available under the priority of the right constitutes unauthorized water diversion and use. Unauthorized diversion is subject to enforcement. (Wat. Code § 1052.)

¹ The term "pre-1914" appropriative water right means those appropriative rights commenced prior to December 19, 1914, the effective date of the Water Commission Act. Therefore, it is possible to have a "pre-1914" appropriative water right with a priority date in 1914.

Byron-Bethany Irrigation District

19. The State Water Board determines the availability of water for water rights of varying priorities in any watershed by comparing the current and projected available water supply with the total water right diversion demand.
20. To determine water availability, the Board relies upon the full natural flows of watersheds calculated by the Department of Water Resources (DWR) for certain watersheds in its Bulletin 120 and in subsequent monthly updates. "Full natural flow," or "unimpaired runoff," represents the natural water production of a river basin, unaltered by upstream diversions, storage, storage releases, or by export or import of water to or from other watersheds. The full natural flow amount is different than the measured stream flows at the given measurement points because the measured flows may be higher or lower due to upstream operations. Forecasted flow data is uncertain, so DWR provides the data in the form of "levels of exceedance" or simply "exceedance" to show the statistical probability that the forecasted supply will occur. The exceedance is simply the percent of the time that the actual flow is expected to exceed the projected flow. The 90 percent exceedance hydrology assumes inflows from rainfall and snowmelt at levels that are likely to be met or exceeded by actual flows with a 90 percent probability, or in other words, there is a ten percent or less chance of actual conditions turning out to be this dry or drier. In April and early May, the State Water Board uses the 90% and 99% exceedance amounts for its analyses due to low flow conditions. DWR's daily natural flow calculations are also used in the analysis.
21. To determine water demand, the State Water Board relies on information supplied by water right holders on annual or triennial reports of water diversion and use required to be true and accurate to the best of the knowledge of the diverters. The Board also incorporates 2014 diversion data submitted pursuant to Order WR 2015-0002. All reported monthly water diversion data is compiled by watershed, type of right and priority dates. The Board performs quality control checks and removes obvious errors, excess reporting, removes demand for direct diversion for power, and makes additional changes based on stakeholders' input. The corrected demand data includes the 2014 reported data for 90% of the watershed demand plus, for the remaining diverters, an averaged diversion amount for 2010 through 2013. These monthly diversion demands are grouped into water right types (riparian, pre-1914 and post-1914 rights).
22. The State Water Board consistently adjusts the water availability and demand analyses based on new information obtained from stakeholders, or adjustments to projected flows from the DWR. State Water Board staff reviews this information and provides revisions to its data set and graphs that are all shown on the Watershed Analysis website (http://www.waterboards.ca.gov/waterrights/water_issues/programs/drought/analysis/).
23. The State Water Board's Watershed Analysis website provides updated graphical summations and spreadsheets containing supporting analysis of the availability and demand analyses. The graphical summations show priorities with monthly demands for the total riparian demand at bottom, the pre-1914 demands added to riparian and depicted above the riparian demand. The monthly amounts are averaged into cubic feet per second for graphical purposes. See, for example, the combined Sacramento/San Joaquin River Basin Senior Supply/Demand Analysis (http://www.waterboards.ca.gov/waterrights/water_issues/programs/drought/analysis/docs/sacsjic_omined.pdf). The Curtailment Analysis website also provides graphical summations of the San Joaquin River Basin Senior Supply/Demand Analysis with Proportional Delta Demand (http://www.waterboards.ca.gov/waterrights/water_issues/programs/drought/analysis/docs/sjprorated.pdf) and the Sacramento River Basin Senior Supply/Demand Analysis with Proportional Delta Demand (http://www.waterboards.ca.gov/waterrights/water_issues/programs/drought/analysis/docs/sacpro rated.pdf).
24. This analysis shows that by June 12, 2015, available supply was insufficient to meet the demands of appropriative rights with priority dates of 1903 and later throughout the Sacramento and San Joaquin River watersheds and the Delta.

Byron-Bethany Irrigation District

25. The June 12 Unavailability Notice applies to S021256 because BBID claims a priority date of May 18, 1914. BBID received an electronic copy of the June 12 Unavailability Notice on June 12, 2015, via the Board's "Drought Updates" Lyris email list system, because Rick Gilmore, BBID's General Manager is a subscriber to that system (via email address r.gilmore@bbid.org). Moreover, BBID issued a public statement on June 12, 2015, in response to the June 12 Unavailability Notice (available at <http://bbid.org/wp-content/uploads/2015/06/BBID-Curtailment-Response-FINAL1.pdf> [last accessed June 25, 2015].) BBID received a paper copy of the June 12 Unavailability Notice no later than June 15, 2015.
26. BBID's diversions are recorded by DWR and posted to the California Data Exchange Center (CDEC) (<http://cdec.water.ca.gov/cgi-progs/queryDaily?BB>) also available at <http://www.water.ca.gov/swp/operationscontrol/docs/delta/DeltaHydrology.pdf>). CDEC reports that BBID has diverted water each day since the June 12 Unavailability Notice:

Date	Avg Diversion Rate (cfs)	Amount Diverted (af)	Date	Avg Diversion Rate (cfs)	Amount Diverted (af)
06/13/2015	91	180	06/20/2015	96	190
06/14/2015	122	242	06/21/2015	99	196
06/15/2015	79	156	06/22/2015	62	123
06/16/2015	83	164	06/23/2015	61	121
06/17/2015	78	154	06/24/2015	67	132
06/18/2015	91	180	06/25/2015	36	71
06/19/2015	80	158	06/26/2015	0	0

27. The daily diversion rates through June 24 are comparable to the District's average daily diversion rates reported for June 2014 (4,842 af/30 days/1.9835=81.4 cfs), and those BBID reported as anticipated for June 2015. This daily rate is in excess of the basic minimum health and safety needs of Mountain House Community Service District. This indicates that BBID has continued its normal diversions following the June 12 Unavailability Notice.
28. BBID diverted a total of approximately two thousand sixty-seven (2,067) acre-feet over the course of thirteen days following the June 12 Unavailability Notice, specifically from June 13 through June 25, 2015.
29. On July 15, 2015, the State Water Board issued a Clarification to the Unavailability Notices indicating that, to the extent that any of the notices described above contain language that may be construed as an order requiring you to curtail diversions under your affected water right, that language has been rescinded. Similarly, any language requiring affected water right holders to submit curtailment certification forms has been rescinded.
30. Diversion or use of water by an appropriative water right holder when there is insufficient water supply available for that water right is an unauthorized diversion or use of water subject to Division 2 of the Water Code. Water Code section 1052, subdivision (a) provides that unauthorized diversion or use of water is a trespass.
31. This enforcement action is based on lack of available water supply under the priority of the right. The Unavailability Notices were issued for the purpose of advising the public and water diverters of the lack of available water under the priority of the rights identified in each notice; the notices are not the basis for this enforcement action.

PROPOSED CIVIL LIABILITY

32. Water Code section 1052 provides that the maximum civil liability that can be imposed by the State Water Board in this matter for the unauthorized diversion and use of the water during a

Byron-Bethany Irrigation District

- drought period is \$1,000 for each day of trespass plus \$2,500 for each acre-foot of water diverted or used in excess of that diverter's water rights.
33. Evidence demonstrates that BBID's unauthorized diversions began on June 13, 2015, and continued until June 25, 2015, for a total of thirteen (13) days. Over that period, BBID diverted approximately two thousand sixty-seven (2,067) acre-feet of water in excess of that available to serve its claimed water right.
 34. Therefore, the maximum civil liability for the alleged violations is **\$5,180,500** [13 days at \$1,000 per day plus 2,067 acre-feet at \$2,500 per acre-foot].
 35. In determining the amount of civil liability, California Water Code section 1055.3 requires that the State Water Board consider all relevant circumstances, including, but not limited to, the extent of harm caused by the violation, the nature and persistence of the violation, the length of time over which the violation occurs, and any corrective action taken by the violator.
 36. In this case, BBID has made unauthorized diversions of water from the Intake Channel to the Banks Pumping Plant (formerly Italian Slough) during the most extreme drought in decades, when there was insufficient water supply available for BBID's claimed water right. BBID was aware that the State Water Board had determined that there was insufficient water supply available for BBID's claimed water right. These unauthorized diversions have reduced or threatened to reduce the amount of water available for downstream water right holders during an extreme drought emergency. Moreover, BBID's diversions likely reduced the water available for instream resources and riparian habitat within the Delta during an extreme drought emergency.
 37. BBID received an economic advantage over other legitimate water diverters in the area by foregoing the costs of buying replacement water during the violation period. During 2015, irrigation districts north of the Delta have paid at least \$250 per acre-foot of replacement water. Thus, by illegally diverting 2,067 acre-feet of water from June 13 through June 25, BBID avoided purchased water costs of at least \$516,750.
 38. The Division estimates that its staff cost to investigate the unauthorized diversion issues and develop the enforcement documents to be \$3,000.
 39. BBID is known to be serving water to Mountain House Community Service District and to power generation facilities that may be deemed critical energy suppliers. BBID and Mountain House Community Service District took corrective actions to secure water available via contract and transfer. Although these supplies were not provided during the violation period identified above, they are recognized as progressive correction actions to prevent unauthorized diversions. Also taken into consideration is the fact that BBID has stopped its diversions from June 26.
 40. Having taken into consideration the factors described above, the Assistant Deputy Director for Water Rights recommends an ACL for the unauthorized diversion of water in the amount of **\$1,553,250**. The recommended penalty is based on the circumstances known to this time, BBID's continued diversions despite lack of availability of water to serve its right during extreme ongoing drought conditions, and to provide a strong disincentive for continued unauthorized diversions by BBID and any similarly-situated parties. The Prosecution Team will consider adjustment of the recommended penalty if BBID provides evidence of the amounts of water pumped that were for health and safety needs or critical power generation.
 41. Should the matter go to hearing, the State Water Board may consider a different liability based on the evidence received, including additional staff costs incurred, up to the maximum amount provided by law. It is estimated that if this this matter goes to hearing, additional staff costs incurred for the prosecution staff would be approximately \$10,000.

RIGHT TO HEARING

42. BBID may request a hearing on this matter before the State Water Board. Any such request for hearing must be in writing and received or postmarked within 20 days of the date this notice is received. (California Water Code, § 1055, subd. (b).)
43. If BBID requests a hearing, BBID will have an opportunity to be heard and to contest the allegations in this Complaint and the imposition of an ACL by the State Water Board. If a hearing is requested, separate notice setting the time and place for the hearing will be mailed not less than 10 days before the hearing date.
44. If BBID requests a hearing, the State Water Board will consider at the hearing whether to impose the civil liability, and, if so, whether to adjust the proposed liability within the amount authorized by statute. Based on the evidence received at the hearing, the State Water Board may take any appropriate action in accordance with sections 100, 275, and 1050 et seq. of the California Water Code and its responsibilities under the public trust doctrine. Any State Water Board order imposing an ACL shall become final and effective upon issuance.
45. If BBID does not wish to request a hearing, please remit a cashier's check or money order within 20 days of the date of this Complaint for the amount of the ACL set forth above to:

State Water Resources Control Board
Division of Water Rights
Enforcement Section
P.O. Box 2000
Sacramento, CA 95812-2000
46. If BBID does not request a hearing and does not remit the ACL amount, the State Water Board may seek recovery of the ACL amount as authorized by Water Code section 1055.4.

STATE WATER RESOURCES CONTROL BOARD


John O'Hagan, Assistant Deputy Director
Division of Water Rights

Dated: JUL 20 2015

EXHIBIT B



RECEIVED

JUL 22 2015



EDMUND G. BROWN JR.
GOVERNOR



MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

State Water Resources Control Board

Byron-Bethany
Irrigation District

JUL 20 2015

Byron-Bethany Irrigation District
Attn: Rick Gilmore, General Manager
7995 Bruns Road
Byron, CA 94514

CERTIFIED MAIL NO. 7003 1680 0000 2965 9480

Daniel Kelley
General Counsel, Byron-Bethany Irrigation District
Somach Simmons & Dunn
500 Capital Mall, Suite 1000
Sacramento, CA 95814

CERTIFIED MAIL NO. 7003 1680 0000 2965 9473

Dear Messrs. Gilmore and Kelley:

ENFORCEMENT ACTION ENF01951 – ADMINISTRATIVE CIVIL LIABILITY COMPLAINT REGARDING UNAUTHORIZED DIVERSION OF WATER FROM THE INTAKE CHANNEL TO THE BANKS PUMPING PLANT (FORMERLY ITALIAN SLOUGH) IN CONTRA COSTA COUNTY

Enclosed is an Administrative Civil Liability (ACL) Complaint relating to your diversions from the intake channel to the Banks Pumping Plant (formerly Italian Slough) after June 12, 2015. This letter serves as notice to Byron-Bethany Irrigation District (BBID) that the State Water Resources Control Board (State Water Board), Division of Water Rights (Division), intends to impose the proposed Administrative Civil Liability.

You have 20 days from receipt of this notice to act or face additional enforcement without further notice. Therefore, this matter requires your immediate attention.

VIOLATION DESCRIPTION

BBID is alleged to have diverted a total of approximately two thousand sixty-seven (2,067) acre-feet over the course of thirteen days, from June 13 through June 25, 2015, during which water was unavailable to serve BBID's water right. The violation is further described in the enclosed ACL Complaint.

ADMINISTRATIVE CIVIL LIABILITY

California Water Code, section 1052, prohibits the unauthorized diversion of water. Water Code section 1052 authorizes the State Water Board to administratively impose civil liability for unauthorized diversions of water during periods of drought emergency in an amount not to exceed \$1,000 per day of violation plus \$2,500 per acre-foot diverted without authorization.

FELICIA MARCUS, CHAIR | THOMAS HOWARD, EXECUTIVE DIRECTOR

1001 J Street, Sacramento, CA 95814 | Mailing Address: P.O. Box 100, Sacramento, CA 95812-0100 | www.waterboards.ca.gov

I am hereby issuing the enclosed ACL Complaint proposing that a liability of \$1,553,250 be imposed for your diversion of water during periods when water supplies were insufficient to fulfill your claimed right. The ACL Complaints provides for a potentially reduced penalty upon showing that water pumped during the time considered under this action was used for health and safety needs, or for critical power generation. **If you fail to respond to the ACL Complaint in one of the manners below within 20 days of receiving this notice, then the State Water Board will issue an ACL Order and seek recovery of this proposed liability amount as authorized by California Water Code section 1055.4.**

If you disagree with the facts or allegations set forth in the ACL Complaint, you may request a hearing before the State Water Board. **Your request for a hearing must be in writing, signed by you or on your behalf, and mailed or hand-delivered to ensure receipt by the State Water Board within 20 days from the date you receive this notice.** You may mail your written hearing request to: State Water Resources Control Board, Division of Water Rights, Attn: Enforcement Section, P.O. Box 2000, Sacramento, CA 95812-2000.

You may hand-deliver your written hearing request to: State Water Resources Control Board, Division of Water Rights, Records Unit, 1001 I Street, 2nd Floor, Sacramento, CA 95814.

If you request a hearing, a hearing will be scheduled before the State Water Board or a designated hearing officer. Prior to the hearing, you will be required to submit any written testimony and other evidence you would like the State Water Board to consider. You will be notified of the hearing date and the submittal deadlines as soon as they are scheduled.

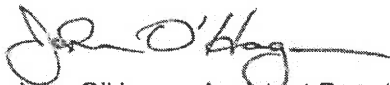
If you fail to come into compliance or request a hearing within 20 days of the date you receive this notice, the State Water Board will adopt the ACL.

SUMMARY OF OPTIONS

1. Submit a written request for hearing within 20 days of receiving the enclosed ACL Complaint; or
2. Do nothing, and receive a final ACL Order.

If you have any questions regarding the ACL Complaint, or if you have information that you want to provide in response to this complaint, or information that you believe the State Water Board staff should otherwise consider, please contact Kathy Mrowka, Manager, Enforcement Section at (916) 341-5363 or Kathy.Mrowka@waterboards.ca.gov; or Andrew Tauriainen, Attorney III, Office of Enforcement, at (916) 341-5445 or Andrew.Tauriainen@waterboards.ca.gov, or send the information directly to them via email.

Sincerely,



John O'Hagan, Assistant Deputy Director
Division of Water Rights

Enclosures: 1) Administrative Civil Liability Complaint

EXHIBIT C

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 in accordance with 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 10/24/2015 at (place) Sacramento, California Signature *[Signature]*

(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 10/23 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).)

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

<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.mcginis@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</p>
<p>South Delta Water Agency John Herrick, Esq. 4255 Pacific Ave., Suite 2 Stockton, CA 95207 jherrlaw@aol.com</p>	<p>State Water Contractors Stefani Morris, Attorney 1121 L Street, Suite 1050 Sacramento, CA 95814 smorris@swc.org</p>

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

9 Attorney for the Division of Water Rights Prosecution Team

10 BEFORE THE STATE WATER RESOURCES CONTROL BOARD

11 STATE OF CALIFORNIA

12 In the Matter of:
13 ADMINISTRATIVE CIVIL LIABILITY
14 COMPLAINT AGAINST BYRON-BETHANY
15 IRRIGATION DISTRICT

16) ADDENDUM TO SUBPOENA *DUCES*
17) *TECUM*

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

21 TO: **BYRON-BETHANY IRRIGATION DISTRICT**
22 **Daniel Kelly**
23 **500 Capitol Mall, Suite 1000**
24 **Sacramento, CA 95814**
25 **dkelly@somachlaw.com**

26 **NOTICE:**

27 () You are served as an individual.

28 () You are served as (or on behalf of) the person

29 doing business under the fictitious name

of _____

(X) You are served on behalf of: Byron-Bethany Irrigation District

1 Pursuant to California Water Code section 1080, California Government Code section 11450.10 ,
2 and California Code of Regulations, title 23, section 649.6, subdivision (a).

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

4 **BYRON-BETHANY IRRIGATION DISTRICT (BBID) IS COMMANDED** to produce the
5 papers, books, records, and documents that are in BBID's possession or under BBID's control, as
6 described below and in connection with the above-titled proceeding, by **noon, November 13,**
7 **2015.** Please send the documents to: Andrew Tauriainen, Staff Counsel III, Office of
8 Enforcement, State Water Resources Control Board, 1001 I Street, 16th Floor, Sacramento,
9 California 95814. You may email electronic records to Andrew.Tauriainen@waterboards.ca.gov,
10 or deliver all records via mail or courier on a suitable electronic storage device, or make electronic
11 records available to download via the Internet.

12 BBID may seek the advice of an attorney in any matter connected with this subpoena, and
13 should consult its attorney promptly so that any problems concerning the production of documents
14 may be resolved within the time required by this Subpoena. Failure to comply with the commands
15 of this Subpoena will subject BBID to the proceedings and penalties provided by law.

16 **A. DEFINITIONS**

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

19 1. The terms "BYRON-BETHANY IRRIGATION DISTRICT" "BYRON-BETHANY" and "BBID"
20 mean Byron-Bethany Irrigation District, an Irrigation District formed pursuant to Division 11 of the
21 California Water Code, and anyone working on its behalf, including but not limited to, its officers,
22 employees, agents, contractors, consultants, and representatives.

23 2. The terms "YOU" or "YOUR" mean BYRON-BETHANY IRRIGATION DISTRICT.

24 3. 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.

29 4. The terms "RELATING TO" or "RELATE TO" shall be construed in the broadest possible

1 sense and shall mean, without limitation, pertaining to, regarding, concerning, comprising,
2 constituting, in connection with, reflecting, respecting, referring to, stating, describing, recording,
3 noting, embodying, containing, mentioning, studying, analyzing, discussing or evaluating.

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

22 6. The term "STATE BOARD" means the State Water Resources Control Board.

23 7. The terms "DIVERT" or "DIVERSION" shall mean any water taken by BBID from the
24 Intake Channel to the Banks Pumping Plant (formerly Italian Slough) in Contra Costa County, or
25 from any other source, under any claim of right and through any means.

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

27 9. All references to a "YEAR" refer to a calendar year.

28 10. Definitions for industry or trade terms contained herein are to be construed broadly.

29 Where the industry or trade definition set forth herein does not coincide precisely with YOUR

1 definition, the question, inquiry or production request should be responded to or answered by
2 using the definition that YOU apply and/or recognize in YOUR usage of the term, and YOUR
3 should further document YOUR definition in the response. Non-industry or non-trade definitions
4 should be applied as defined herein.

5 **B. INSTRUCTIONS**

6 1. Unless otherwise indicated, the time period covered by this subpoena is from
7 **June 1, 2015 to up to five days before YOUR full compliance with this subpoena.** Any
8 documents RELATING TO this time period are to be produced, regardless of whether the
9 documents came into existence before or during this period.

10 2. YOUR response to the subpoena should include a declaration or affidavit. It should state
11 that a diligent search for all requested DOCUMENTS has been conducted and that the affiant or
12 declarant was in charge of the search or otherwise monitored and reviewed the search sufficiently
13 to be able to represent under oath that such a search was conducted. It should be signed under
14 oath by the person most knowledgeable about the DOCUMENTS and YOUR efforts to comply
15 with the subpoena. If different people are the most knowledgeable about portions of the search
16 (e.g., one person is most knowledgeable about DOCUMENTS contained in computer media and a
17 different person is most knowledgeable about DOCUMENTS contained on paper) each should sign an
18 affidavit or declaration identifying the category in the request for DOCUMENTS for which that
19 person is the most knowledgeable.

20 3. Unless otherwise indicated, for any DOCUMENT stored in a computer, including all
21 electronic mail messages, YOU should produce the DOCUMENT in the original electronic file
22 format in which it was created (e.g., Microsoft email should be provided in its original format,
23 which would have the .pst suffix, not in a tif file; spreadsheets should be in their original file form,
24 such as an Excel file and word-processed DOCUMENTS should be in their original file format,
25 such as a Word or WordPerfect file), together with instructions and all other materials necessary
26 to use or interpret the data. Electronic mail messages should be provided, even if only available
27 on backup or archive tapes or disks. Computer media should be accompanied by (a) an
28 identification of the generally available software needed to open and view the DOCUMENTS or
29 (b) a copy of the software needed to open and view the DOCUMENT. Note, however, that if a

1 print-out from a computer DOCUMENT is a non-identical copy of the electronic form in which it
2 was created (non-identical by way of example but not limitation, because it has a signature,
3 handwritten notation, or other mark or attachment not included in the computer DOCUMENT),
4 both the electronic form in which the DOCUMENT was created and the original print-out should
5 be produced.

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

9 5. For all DOCUMENTS for which YOU do not produce in the original, as defined in Evidence
10 Code section 255, YOU may submit copies (black and white copies if the original was in black and
11 white, color copies if the original was in color, and, if the original was in electronic format, in the
12 same electronic medium as the original) in lieu of original DOCUMENTS provided that such
13 copies are accompanied by an affidavit of an officer of BBID stating that the copies of all types of
14 DOCUMENTS are true, correct, and complete copies of the original DOCUMENTS. If there is in
15 YOUR possession, custody or control no original, but only a copy or photographic record thereof,
16 then YOU should produce a true and legible copy of each such DOCUMENT. The accompanying
17 affidavit should state that the DOCUMENT is only a copy or photographic record and not the
18 original.

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

23 7. If any DOCUMENT subpoenaed is no longer in YOUR possession, custody, control, or
24 care, YOU should provide a written statement identifying the DOCUMENT with specificity, stating
25 whether it is lost or missing, has been destroyed, has been transferred to others, or has otherwise
26 been disposed of. The written statement should also identify the person who disposed of the
27 DOCUMENT, explain the circumstances and authorization for the disposition and the approximate
28 date of the disposition of the DOCUMENT. If there are no DOCUMENTS responsive to a
29

1 document request, as to each such document request, YOU should include a statement to that
2 effect in the accompanying declaration or affidavit.

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

7 9. Each DOCUMENT produced pursuant to this subpoena should be identified according to
8 the category in the subpoena to which it is responsive. In lieu of indicating on each DOCUMENT
9 the category to which it is responsive, on the date set for production, YOU may instead provide an
10 index if YOU provide it in both paper and in electronic form (such as a computerized spreadsheet
11 in Excel or a Word or WordPerfect document set up in a table format) of all DOCUMENTS YOU
12 produce, as long as this index shows by document control number the request(s) to which each
13 DOCUMENT or group of DOCUMENTS is responsive. Responsive DOCUMENTS from each
14 person's files should be produced together, in one box or in consecutive boxes, or on one disk or
15 consecutive disks. Mark each page of a paper DOCUMENT and each tangible thing containing
16 audio, video, computer, or other electronic DOCUMENTS (e.g. cassette, disk, tape or CD) with
17 corporate identification and consecutive document control numbers (e.g., S.I.. 00001, S.I. CD
18 001, S.I. audio tape 001). Number each box of DOCUMENTS produced and mark each with the
19 name(s) of the person(s) whose files are contained therein, the requests(s) to which they are
20 responsive, and the document control numbers contained therein.

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

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

29

1 12. If any DOCUMENTS are withheld from production based on a claim of privilege, provide a
2 log under oath by the affiant or declarant, which includes each DOCUMENT'S authors,
3 addressees, date, a description of each DOCUMENT, all recipients of the original, and any
4 copies, and the request(s) of this subpoena to which the DOCUMENT is responsive. Attachments
5 to a DOCUMENT shall be identified as such and entered separately on the log. For each author,
6 addressee, and recipient, state the person's full name, title, and employer or firm, and denote all
7 attorneys with an asterisk. To the extent the claim of privilege relates to any employee, agent,
8 representative, or outside attorney, identify the person's name, division, and organization. Include
9 the number of pages of each DOCUMENT and in the description of the DOCUMENT, provide
10 sufficient information to identify its general subject matter without revealing information over which
11 a privilege is claimed. For each DOCUMENT withheld under a claim that it constitutes or contains
12 attorney work product, also state whether YOU assert that the DOCUMENT was prepared in
13 anticipation of litigation or for trial and, if so, identify the anticipated litigation or trial on which the
14 assertion is based. Submit all non-privileged portions of any responsive DOCUMENT (including
15 non-privileged or redactable attachments) for which a claim of privilege is asserted (except where
16 the only non-privileged information has already been produced in response to this instruction),
17 noting where redactions in the DOCUMENT have been made. DOCUMENTS authored by outside
18 lawyers representing YOU that were not directly or indirectly furnished to YOU or any third-party,
19 such as internal law firm memoranda, may be omitted from the log.

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

24 **C. DOCUMENTS TO BE PRODUCED**

25 This subpoena commands production of the original of each and every DOCUMENT now
26 or at any time in the possession, custody or control of YOU without regard to the person(s) by
27 whom or for whom said DOCUMENTS were prepared, including, but not limited to, all
28 DOCUMENTS in the personal, business, or other files of all present or former officers, directors,
29

1 trustees, agents, employees, attorneys, and accountants of BBID, which RELATES TO any of the
2 following subjects:

3 1. ALL DOCUMENTS and COMMUNICATIONS RELATING TO the DIVERSION of
4 water by BYRON-BETHANY IRRIGATION DISTRICT during the period June 1 through
5 September 30, 2015, including, but not limited to, daily and monthly DIVERSION amounts.

6 2. ALL DOCUMENTS and COMMUNICATIONS RELATING TO the DIVERSION of
7 water by BBID pursuant to BBID's claimed pre-1914 appropriative water right (Statement Number
8 S021256) during the period June 1 through September 30, 2015, including, but not limited to, the
9 daily and monthly DIVERSION amounts.

10 3. ALL DOCUMENTS and COMMUNICATIONS RELATING TO any contract or
11 agreement between BBID and the California Department of Water Resources ("DWR") regarding
12 the DIVERSION of water at BBID's point or points of DIVERSION in effect during the period June
13 1, 2015, through September 30, 2015.

14 4. ALL DOCUMENTS and COMMUNICATIONS RELATING TO the reporting by BBID
15 to DWR or to any agents, employees, attorneys, and accountants of DWR, RELATING TO the
16 DIVERSION of water during the period June 1, 2015, through September 30, 2015, including, but
17 not limited to, daily DIVERSION amounts.

18 5. ALL DOCUMENTS and COMMUNICATIONS RELATING TO water supply
19 agreements or contracts to supply water to BBID or to property within BBID's boundaries at any
20 time during the period June 1, 2015, through September 30, 2015, made between BBID and any
21 other party or parties, including, but not limited to, Carmichael Water District, Contra Costa Water
22 District, and South San Joaquin Irrigation District.

23 6. ALL DOCUMENTS and COMMUNICATIONS RELATING TO the DIVERSION of
24 water by BBID pursuant to any water supply agreements or contracts to supply water to BBID or
25 to property within BBID's boundaries at any time during the period June 1, 2015, through
26 September 30, 2015, including daily, weekly, and monthly DIVERSION amounts.

27 7. ALL DOCUMENTS and COMMUNICATIONS RELATING TO water supply
28 agreements or contracts for BBID to supply water to any other party or parties at any time during
29 the period June 1 through September 30, 2015, made between BBID and any other party or

1 parties including, but not limited to, Contra Costa County Airport and Mountain House Community
2 Services District.


3 8. ALL DOCUMENTS and COMMUNICATIONS RELATING TO the DIVERSION of
4 water by BBID pursuant to any water supply agreements or contracts for BBID to supply water to
5 any other party or parties at any time during the period June 1, 2015, through September 30,
6 2015, including daily, weekly, and monthly DIVERSION amounts.

7 9. ALL DOCUMENTS and COMMUNICATIONS RELATING TO the delivery of water
8 by BBID to property within BBID's boundaries, for any purpose or use including, but not limited to,
9 irrigation, industrial, municipal or domestic, during the period June 1, 2015, through September
10 30, 2015, including the total amount of water delivered during the period, the amount of water
11 delivered each day during the period, the recipients of the water, the total amount of water
12 delivered to each recipient during the period, and the amount of water delivered on a daily basis
13 to each recipient during that period.

14 10. ALL DOCUMENTS and COMMUNICATIONS RELATING TO the delivery of water
15 by BBID to property outside of BBID's boundaries, for any purpose including, but not limited to,
16 irrigation, municipal or domestic, during the period June 1 through September 30, 2015, including
17 the total amount of water delivered during the period, the total amount of water delivered each
18 day during the period, the recipients of the water, the total amount of water delivered to each
19 recipient during the period, and the amount of water delivered on a daily basis to each recipient
20 during that period.

21 11. ALL DOCUMENTS and COMMUNICATIONS RELATING TO any agreements
22 between BBID and any other party, including, but not limited to the United States Bureau of
23 Reclamation ("Reclamation") or DWR, to wheel water through water facilities owned or controlled
24 by any other party including, but not limited to, Reclamation or DWR, at any time during the period
25 June 1, 2015, through September 30, 2015.

26
27 Date: 10/29/2015



Andrew Tauriainen
Attorney for the Prosecution Team
Office of Enforcement
State Water Resources Control Board

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

9 Attorney for the Division of Water Rights Prosecution Team

10 BEFORE THE STATE WATER RESOURCES CONTROL BOARD

11 STATE OF CALIFORNIA

12 In the Matter of:
13 ADMINISTRATIVE CIVIL LIABILITY
14 COMPLAINT AGAINST BYRON-BETHANY
15 IRRIGATION DISTRICT

16)
17) AFFIDAVIT IN SUPPORT OF SUBPOENA
18) *DUCES TECUM*
19) California Water Code § 1080; California
20) Government Code § 11450.10; Cal. Code
21) Regs., tit. 23, § 649.6(a)
22)
23)
24)
25)
26)

27 **I, Andrew Tauriainen, declare as follows:**

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

1 The Assistant Deputy Director, Division of Water Rights, issued an Administrative
Civil Liability Complaint (ALC) against the Byron-Bethany Irrigation District (BBID) on July 20,
2015, alleging that BBID violated Water Code section 1052 which prohibits the unauthorized
diversion or use of water, and diverted water from June 13 through June 25, 2015, a period in
which State Water Board staff had determined that no water was available to serve BBID's
claimed pre-1914 appropriative water right..

3 On August 19, 2015, the Division of Water Rights Hearing Team issued a Notice of
Public Hearing and Pre-Hearing Conference, scheduling the hearing on the ALC matter for
October 28, 2015, and continuing the hearing if necessary on October 29 and 30, 2015. The

1 Hearing Officer held a Pre-Hearing Conference on September 25, 2015, during which she
2 indicated that she would consider various requests by a number of parties to reschedule the
3 hearing and evidentiary submittal deadlines. On October 2, 2015, the Hearing Officer issued a
4 letter postponing the hearing until March 21, 2016, and postponing the evidence and witness
5 submittal deadlines to January 18, 2016, with rebuttal evidence and witness submittals due
6 February 22, 2016.

7 4. Good cause exists for the production of the documents described in the Subpoena
8 *Duces Tecum* and Addendum, served herewith, because the documents requested concern the
9 issues outlined in the ACLC and are required in order to determine whether BBID violated Water
10 Code section 1052 by illegally diverting water. The requested documents specifically concern
11 BBID's diversions of water from the Intake Channel to the Banks Pumping Plant (formerly Italian
12 Slough), and its diversions of water pursuant to water supply contracts, including those claimed by
13 BBID in submittals to the Division of Water Rights pursuant to Order WR 2015-0002-DWR (Order
14 for Additional Information dated February 4, 2015).

15 5. The documents and information requested in the Subpoena *Duces Tecum* and
16 Addendum, served herewith, are within BBID's possession and/or within BBID's control, as they
17 concern BBID's diversions and deliveries of water, including the basis of right for the diversions
18 and the amounts diverted.

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

21
22 Date: 10/29/2015

23 
24 Andrew Tauriainen
25 Office of Enforcement
26 State Water Resources Control Board
27
28
29

EXHIBIT D

From: Yolanda De La Cruz ydelacruz@somachlaw.com

Subject: BBID Meet & Confer (Enforcement Action ENF01951)

Date: October 30, 2015 at 3:50 PM

To: Andrew Tauriainen andrew.tauriainen@waterboards.ca.gov

Cc: John Herrick jherrlaw@aol.com, Jennifer L. Spaletta Jennifer@spalettalaw.com, Valerie Kincaid vkincaid@olaughlinparis.com, Jeanne Zolezzi jzolezzi@herumcrabtree.com, Tim O'Laughlin towater@olaughlinparis.com, Andrew Tauriainen andrew.tauriainen@waterboards.ca.gov, Jonathan Knapp jonathan.knapp@sfgov.org, Richard Morat rmorat@gmail.com, Robbins McGinnis robin.mcginnis@water.ca.gov, Stefanie Morris smorris@swc.org, Marian Norris marian.norris@sen.ca.gov, Rick Gilmore rgilmore@bbid.org, wrhearing@waterboards.ca.gov, Dan Kelly dkelly@somachlaw.com, Michael Vergara mvergara@somachlaw.com

Attached please find Byron-Bethany's Irrigation District's Meet and Confer Re Subpoena Duces Tecum.



10-30-15 PT Ltr Re
Meet Conf ... Tecum.pdf



Yolanda De La Cruz | *Legal Secretary*
to Daniel Kelly, Kanwarjit S. Dua, and Aaron A. Ferguson

500 Capitol Mall, Suite 1000 | Sacramento, CA 95814

Office 916.446.7979 | **Direct** 916.469-3815 | **Fax** 916.446.8199 | ydelacruz@somachlaw.com

<http://www.somachlaw.com>

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October 30, 2015

Via Electronic Mail

Andrew Tauriainen, Attorney III
State Water Resources Control Board
Office of Enforcement
1001 I Street, 16th Floor
Sacramento, CA 95814

Re: Byron-Bethany Irrigation District's Meet and Confer Re Subpoena
Duces Tecum - Enforcement Action ENF01951

Dear Mr. Tauriainen:

The purpose of this letter is to meet and confer with you regarding a Subpoena *Duces Tecum* (Subpoena) issued by the Prosecution Team on October 29, 2015. The Byron-Bethany Irrigation District (BBID) is preparing a Motion for Protective Order (Motion) requesting the State Water Resources Control Board (SWRCB) issue an order preventing the Prosecution Team from imposing unreasonable and oppressive demands through the Subpoena.

As a preliminary matter, the Prosecution Team failed to consult with BBID regarding BBID's availability on November 13, 2015. Moreover, for the following reasons the Subpoena is oppressive and unreasonable. In the Administrative Civil Liability complaint in Enforcement Action ENF01951, the SWRCB alleges an unlawful diversion of water from June 13 through June 25, 2015. The Subpoena, however, seeks a multitude of categories of documents related to the diversion and use of water through the end of September 2015. Thus, your Subpoena seeks documents not relevant to Enforcement Action ENF01951, and seeks documents not calculated to lead to the discovery of admissible evidence.

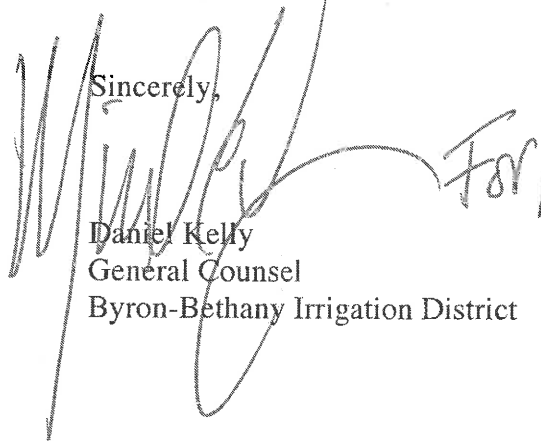
Furthermore, BBID requested documents from the Prosecution Team and SWRCB through a Public Records Act request on July 21, 2015. After more than three months, neither the Prosecution Team nor the SWRCB has fulfilled its legal obligation to produce the requested documents. Given the failure of the Prosecution Team and the SWRCB to timely produce documents sought by BBID, your demand that all the information sought by your Subpoena be produced in less than 10 business days is an abuse of the discovery process.

Andrew Tauriainen, Attorney III
Re: BBID's Meet and Confer Re Subpoena Duces Tecum
October 30, 2015
Page 2

BBID is prepared to cooperate with the Prosecution Team to narrow the scope of documents sought by the Subpoena, and to increase the time for production, in order to allow the Prosecution Team to obtain relevant information within a reasonable time. In the event, however, you are unwilling to modify the scope of your Subpoena and the time for production of responsive documents, BBID will file the Motion.

If we do not receive a written response to this letter by 5:00 p.m. on November 2, 2015, we will assume that you decline to modify the Subpoena as requested, and we will file the Motion.

Sincerely,

A handwritten signature in black ink, appearing to read "Daniel Kelly", with a large flourish extending to the right that ends in the word "For,".

Daniel Kelly
General Counsel
Byron-Bethany Irrigation District

DK:yd

cc: Service List

**SERVICE LIST OF PARTICIPANTS
 BYRON-BETHANY IRRIGATION DISTRICT
 ADMINISTRATIVE CIVIL LIABILITY HEARING
 (Revised 9/2/15; Revised: 9/11/15)**

<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 Avenue, Suite 222 Stockton, CA 95207 jzolezzi@herumcrabtree.com</p>	<p>City and County of San Francisco Jonathan Knapp Office of the City Attorney 1390 Market Street, Suite 418 San Francisco, CA 94102 jonathan.knapp@sfgov.org</p>
<p>Central Delta Water Agency Jennifer Spaletta Law PC P.O. Box 2660 Lodi, CA 95241 jennifer@spalettalaw.com</p> <p>Dante John Nomellini Daniel A. McDaniel Dante John Nomellini, Jr. NOMELLINI, GRILLI & MCDANIEL 235 East Weber Avenue Stockton, CA 95202 ngmplcs@pacbell.net dantejr@pacbell.net</p>	<p>California Department of Water Resources Robin McGinnis, Attorney P.O. Boc 942836 Sacramento, CA 94236-0001 robin.mcginnis@water.ca.gov</p>
<p>Richard Morat 2821 Berkshire Way Sacramento, CA 95864 rmorat@gmail.com</p>	<p>San Joaquin Tributaries Authority Tim O'Laughlin Valerie C. Kincaid O'Laughlin & Paris LLP 2617 K Street, Suite 100 Sacramento, CA 95816 towater@olaughlinparis.com vkinaid@olaughlinparis.com</p>

South Delta Water Agency
John Herrick
Law Offices of John Herrick
4255 Pacific Avenue, Suite 2
Stockton, CA 95207
Email: jherrlaw@aol.com

State Water Contractors
Stefani Morris
1121 L Street, Suite 1050
Sacramento, CA 95814
smorris@swc.org

From: Tauriainen, Andrew@Waterboards Andrew.Tauriainen@waterboards.ca.gov
Subject: RE: BBID Meet & Confer (Enforcement Action ENF01951)
Date: October 30, 2015 at 4:36 PM
To: Dan Kelly (dkelly@somachlaw.com) dkelly@somachlaw.com, Michael Vergara (mvergara@somachlaw.com) mvergara@somachlaw.com
Cc: Herrick, John @aol.com jherrlaw@aol.com, 'Jennifer Spaletta' (jennifer@spalettalaw.com) jennifer@spalettalaw.com, Jeanne Zolezzi jzolezzi@herumcrabtree.com, Valerie Kincaid vkincaid@olaughlinparis.com, Jonathan Knapp (jonathan.knapp@sfgov.org) jonathan.knapp@sfgov.org, rjmorat@gmail.com, McGinnis, Robin C.@DWR Robin.McGinnis@water.ca.gov, Stefanie Morris (smorris@swc.org) smorris@swc.org, "Dante Nomellini, Jr." (dantejr@pacbell.net) dantejr@pacbell.net, ngmpics@pacbell.net, Janelle Krattiger jkrattiger@herumcrabtree.com, kharrigfeld@herumcrabtree.com, Dean Ruiz (dean@hprlaw.net) dean@hprlaw.net

Daniel and Michael:

1. What specific changes to the subpoena do you propose to narrow the scope of the documents sought? The subpoena generally seeks diversion information because you've indicated that you will object to CDEC evidence and discovery is your preferred method to reach fact stipulations. The subpoena seeks diversion information from June 1 through June 12 as relevant to determining your baseline and average diversions for the month of June. The subpoena seeks diversion information after June 25 in order to determine when BBID stopped diverting, and to examine why BBID resumed diversions in July, both of which the Board may find relevant under Water Code section 1055.3. The subpoena seeks documents relating to contracts, exchange agreements, etc, starting June 1 in order to determine whether BBID had an alternative supply or basis for diverting during the relevant period.
2. What specific changes to you propose to increase the time for production? What if we set a specific date, e.g., November 12, at the commencement of the first deposition, as the deadline to complete PRA and subpoena disclosures?

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

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From: Yolanda De La Cruz [mailto:ydelaacruz@somachlaw.com]
Sent: Friday, October 30, 2015 3:50 PM
To: Tauriainen, Andrew@Waterboards
Cc: Herrick, John @aol.com; Jennifer L. Spaletta; Valerie Kincaid; Jeanne Zolezzi; Tim O'Laughlin; Tauriainen, Andrew@Waterboards; Jonathan Knapp; Richard Morat; McGinnis, Robin C.@DWR; Stefanie Morris; Marian Norris; Rick Gilmore; Unit, Wr_Hearing@Waterboards; Dan Kelly; Michael Vergara
Subject: BBID Meet & Confer (Enforcement Action ENF01951)

From: Michael Vergara mvergara@somachlaw.com
Subject: Re: BBID Meet & Confer (Enforcement Action ENF01951)
Date: November 4, 2015 at 6:08 PM
To: Tauriainen, Andrew@Waterboards Andrew.Tauriainen@waterboards.ca.gov
Cc: Dan kelly dkelly@somachlaw.com, Herrick, John jherriaw@aol.com, 'Jennifer Spaletta' (jennifer@spallettalaw.com)
jennifer@spallettalaw.com, Jeanne Zolezzi jzolezzi@herumcrabtree.com, Valerie Kincaid vkincaid@olaughlinparis.com,
Jonathan Knapp (jonathan.knapp@sfgov.org) jonathan.knapp@sfgov.org, rjmorat@gmail.com, McGinnis, Robin C.@DWR
Robin.McGinnis@water.ca.gov, Stefanie Morris (smorris@swc.org) smorris@swc.org;
"Dante Nomellini, Jr." (dantejr@pacbell.net) dantejr@pacbell.net, ngmpics@pacbell.net, Janelle Krattiger
jkrattiger@herumcrabtree.com, kharrigfeld@herumcrabtree.com, Dean Ruiz (dean@hprlaw.net) dean@hprlaw.net
Bcc: Louinda Lacey llacey@lacey-law.com, Dan kelly dkelly@somachlaw.com

Andrew,

The Administrative Civil Liability Compliant issued by the SWRCB against BBID states in paragraphs 33 and 34 that the SWRCB seeks civil penalties from BBID for "unauthorized diversions ... for a total of thirteen (13) days" between June 13, 2015 and June 25, 2015. Thus, we maintain that the scope of your discovery is limited to the period June 13, 2015 to June 25, 2015. We will not voluntarily allow you to engage in a fishing expedition that deviates from the confines of the Complaint. If you agree to limit the scope of the subpoena to the time period covered by the Complaint, we are prepared to identify and produce relevant responsive documents for the the period of June 13, 2015 to June 25, 2015.

Also, as I stated in my previous letter to you regarding this matter, we object to the stated time for production (i.e., November 13). We believe a realistic production date is November 30, 2015.

If these limitations and changes are acceptable to you, please let me know before 5:00 p.m., Thursday, November, 5. If we can't reach agreement by tomorrow, we will seek a protective order.

I await your response.

Best Regards,

Mike



Michael E. Vergara | Attorney

500 Capitol Mall, Suite 1000 | Sacramento, CA 95814
Office 916.446.7979 | **Direct** 916.469-3824 | **Fax** 916.446.8199 | mvergara@somachlaw.com
<http://www.somachlaw.com>

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On Oct 30, 2015, at 4:36 PM, Tauriainen, Andrew@Waterboards <Andrew.Tauriainen@waterboards.ca.gov> wrote:

Daniel and Michael:

1. What specific changes to the subpoena do you propose to narrow the scope of the documents sought? The subpoena generally seeks diversion information because you've indicated that you will object to CDEC evidence and discovery is your preferred method to reach fact stipulations. The subpoena seeks diversion information from June 1 through June 12 as relevant to determining your baseline and average diversions for the month of June

From: Tauriainen, Andrew@Waterboards Andrew.Tauriainen@waterboards.ca.gov
Subject: RE: BBID Meet & Confer (Enforcement Action ENF01951)
Date: November 6, 2015 at 10:43 AM
To: Michael Vergara mvergara@somachlaw.com
Cc: Dan kelly dkelly@somachlaw.com, Herrick, John @aol.com jherrlaw@aol.com, 'Jennifer Spaletta' (jennifer@spalettalaw.com) jennifer@spalettalaw.com, Jeanne Zolezzi jzolezzi@herumcrabtree.com, Valerie Kincaid vkincaid@olaughlinparis.com, Jonathan Knapp (jonathan.knapp@sfgov.org) jonathan.knapp@sfgov.org, rjmorat@gmail.com, McGinnis, Robin C.@DWR Robin.McGinnis@water.ca.gov, Stefanie Morris (smorris@swc.org) smorris@swc.org, "Dante Nomellini, Jr." (dantejr@pacbell.net) dantejr@pacbell.net, ngmpics@pacbell.net, Janelle Krattiger jkrattiger@herumcrabtree.com, kharrigfeld@herumcrabtree.com, Dean Ruiz (dean@hprlaw.net) dean@hprlaw.net

Michael,

My apologies for not responding before now. I was tied up yesterday. If it is not too late, the Prosecution Team offers the following: Discovery relating to diversion before the alleged violations period is relevant to determining if the diversions during the alleged violations period were consistent with diversions prior. Discovery relating to diversion after the alleged violations period is relevant to determining whether BBID ceased diversions on June 25. The Prosecution Team therefore is willing to limit the scope of the subpoena to June 1 through June 30, 2015.

November 30 is an acceptable production deadline.

Andrew Tauriainen, Attorney III
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Sacramento, CA 95814
tel: (916) 341-5445
fax: (916)341-5896
atauriainen@waterboards.ca.gov

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From: Michael Vergara [mailto:mvergara@somachlaw.com]
Sent: Wednesday, November 04, 2015 6:09 PM
To: Tauriainen, Andrew@Waterboards
Cc: Dan kelly; Herrick, John @aol.com; 'Jennifer Spaletta' (jennifer@spalettalaw.com); Jeanne Zolezzi; Valerie Kincaid; Jonathan Knapp (jonathan.knapp@sfgov.org); rjmorat@gmail.com; McGinnis, Robin C.@DWR; Stefanie Morris (smorris@swc.org); "Dante Nomellini, Jr." (dantejr@pacbell.net); ngmpics@pacbell.net; Janelle Krattiger; kharrigfeld@herumcrabtree.com; Dean Ruiz (dean@hprlaw.net)
Subject: Re: BBID Meet & Confer (Enforcement Action ENF01951)

Andrew,

The Administrative Civil Liability Complaint issued by the SWRCB against BBID states in paragraphs 22 and 24 that the SWRCB seeks civil penalties from BBID for "summarizing"

From: Michael Vergara mvergara@somachlaw.com
Subject: Re: BBID Meet & Confer (Enforcement Action ENF01951)
Date: November 9, 2015 at 10:34 AM
To: Tauriainen, Andrew@Waterboards Andrew.Tauriainen@waterboards.ca.gov
Cc: Dan Kelly dkelly@somachlaw.com, Herrick, John @aol.com jherriaw@aol.com, 'Jennifer Spaletta' (jennifer@spalettalaw.com) jennifer@spalettalaw.com, Jeanne Zolezzi jzolezzi@herumcrabtree.com, Valerie Kincaid vkincaid@olaughlinparis.com, Jonathan Knapp (jonathan.knapp@sfgov.org) jonathan.knapp@sfgov.org, rjmorat@gmail.com, McGinnis, Robin C.@DWR Robin.McGinnis@water.ca.gov, Stefanie Morris (smorris@swc.org) smorris@swc.org, "Dante Nomellini, Jr." (dantejr@pacbell.net) dantejr@pacbell.net, ngmpics@pacbell.net, Janelle Krattiger jkrattiger@herumcrabtree.com, kharrigfeld@herumcrabtree.com, Dean Ruiz (dean@hpriaw.net) dean@hpriaw.net
Bcc: Dan Kelly dkelly@somachlaw.com, Yolanda De La Cruz ydelacruz@somachlaw.com, Louinda Lacey lfacey@lacey-law.com

Andrew,

While I appreciate your willingness to reduce the scope of the demands, the State Water Resources Control Board is "prosecuting" BBID for alleged violation of Water Code section 1052 during days specified in the ACL complaint. The ACL complaint serves to limit the scope of the Prosecution Team's discovery, and the Prosecution Team cannot now seek to use the ACL complaint as a means of expanding the allegations against BBID.

I do appreciate your willingness to provide BBID more time to respond to the subpoena, but because we disagree regarding the time period covered by the demands we will file a motion to quash. If, however, you reconsider and agree to limit the scope of the subpoena to the period June 13, 2015 to June 25, 2015, as alleged in the ACL complaint, we will provide responsive documents (to the extent they exist) by November 30.

Please advise by 1:00 p.m. today.

Best Regards,

Mike



Michael E. Vergara | Attorney

500 Capitol Mall, Suite 1000 | Sacramento, CA 95814

Office 916.446.7979 | **Direct** 916.469-3824 | **Fax** 916.446.8199 | mvergara@somachlaw.com

<http://www.somachlaw.com>

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On Nov 6, 2015, at 10:43 AM, Tauriainen, Andrew@Waterboards <Andrew.Tauriainen@waterboards.ca.gov> wrote:

Michael,

My apologies for not responding before now. I was tied up yesterday. If it is not too late, the Prosecution Team offers the following: Discovery relating to diversion before the alleged violations period is relevant to determining if the diversions during the alleged violations period were consistent with diversions prior. Discovery relating to diversion after the alleged violations period is relevant to determining whether BBID ceased diversions on June 25. The Prosecution Team therefore is willing to limit the scope of the subpoena to June 1 through June 30, 2015.

From: Tauriainen, Andrew@Waterboards Andrew.Tauriainen@waterboards.ca.gov
Subject: RE: BBID Meet & Confer (Enforcement Action ENF01951)
Date: November 9, 2015 at 12:42 PM
To: Michael Vergara mvergara@somachlaw.com
Cc: Dan Kelly dkelly@somachlaw.com, Herrick, John @aol.com jherrlaw@aol.com, 'Jennifer Spaletta' (jennifer@spalettalaw.com) jennifer@spalettalaw.com, Jeanne Zolezzi jzolezzi@herumcrabtree.com, Valerie Kincaid vkincaid@olaughlinparis.com, Jonathan Knapp (jonathan.knapp@sfgov.org) jonathan.knapp@sfgov.org, rjmorat@gmail.com, McGinnis, Robin C.@DWR Robin.McGinnis@water.ca.gov, Stefanie Morris (smorris@swc.org) smorris@swc.org, "Dante Nomellini, Jr." (dantejr@pacbell.net) dantejr@pacbell.net, ngrmpics@pacbell.net, Janelle Krattiger jkrattiger@herumcrabtree.com, kharrigfeld@herumcrabtree.com, Dean Ruiz (dean@hprlaw.net) dean@hprlaw.net

Your insistence that BBID's activities on days outside of the alleged violations period are irrelevant to the alleged violations is baffling, but consistent with your demonstrated unwillingness to address any fact issues except through contentious discovery. Please address any motion to the subpoena as issued.

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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From: Michael Vergara [mailto:mvergara@somachlaw.com]
Sent: Monday, November 09, 2015 10:35 AM
To: Tauriainen, Andrew@Waterboards
Cc: Dan Kelly; Herrick, John @aol.com; 'Jennifer Spaletta' (jennifer@spalettalaw.com); Jeanne Zolezzi; Valerie Kincaid; Jonathan Knapp (jonathan.knapp@sfgov.org); rjmorat@gmail.com; McGinnis, Robin C.@DWR; Stefanie Morris (smorris@swc.org); "Dante Nomellini, Jr." (dantejr@pacbell.net); ngrmpics@pacbell.net; Janelle Krattiger; kharrigfeld@herumcrabtree.com; Dean Ruiz (dean@hprlaw.net)
Subject: Re: BBID Meet & Confer (Enforcement Action ENF01951)

Andrew,

While I appreciate your willingness to reduce the scope of the demands, the State Water Resources Control Board is "prosecuting" BBID for alleged violation of Water Code section 1052 during days specified in the ACL complaint. The ACL complaint serves to limit the scope of the Prosecution Team's discovery, and the Prosecution Team cannot now seek to use the ACL compliant as a means of expanding the allegations against BBID.

I do appreciate your willingness to provide BBID more time to respond to the subpoena, but because my discovery regarding the time period covered by the demands will file a motion

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PROOF OF SERVICE

I am employed in the County of Sacramento; my business address is 500 Capitol Mall, Suite 1000, Sacramento, California; I am over the age of 18 years and not a party to the foregoing action.

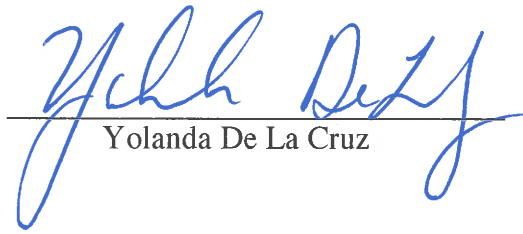
On November 9, 2015, I served the following document(s):

**DECLARATION OF MICHAEL E. VERGARA SUPPORTING MOTION TO QUASH,
OR ALTERNATIVELY, MOTION FOR PROTECTIVE ORDER**

X (via electronic mail) by causing to be delivered a true copy thereof to the person(s) and at the email addresses set forth below:

SEE ATTACHED SERVICE LIST

I declare under penalty of perjury that the foregoing is true and correct. Executed on November 9, 2015 at Sacramento, California.


Yolanda De La Cruz

**SERVICE LIST OF PARTICIPANTS
 BYRON-BETHANY IRRIGATION DISTRICT
 ADMINISTRATIVE CIVIL LIABILITY HEARING
 (Revised 9/2/15; Revised: 9/11/15)**

SOMACH SIMMONS & DUNN
 A Professional Corporation

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<p><u>VIA ELECTRONIC MAIL</u></p> <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><u>VIA ELECTRONIC MAIL</u></p> <p>Byron-Bethany Irrigation District Daniel Kelly Somach Simmons & Dunn 500 Capitol Mall, Suite 1000 Sacramento, CA 95814 dkelly@somachlaw.com</p>
<p><u>VIA ELECTRONIC MAIL</u></p> <p>Patterson Irrigation District Banta-Carbona Irrigation District The West Side Irrigation District Jeanne M. Zolezzi Herum\Crabtree\Suntag 5757 Pacific Avenue, Suite 222 Stockton, CA 95207 jzolezzi@herumcrabtree.com</p>	<p><u>VIA ELECTRONIC MAIL</u></p> <p>City and County of San Francisco Jonathan Knapp Office of the City Attorney 1390 Market Street, Suite 418 San Francisco, CA 94102 jonathan.knapp@sfgov.org</p>
<p><u>VIA ELECTRONIC MAIL</u></p> <p>Central Delta Water Agency Jennifer Spaletta Law PC P.O. Box 2660 Lodi, CA 95241 jennifer@spalettalaw.com</p> <p>Dante John Nomellini Daniel A. McDaniel Dante John Nomellini, Jr. NOMELLINI, GRILLI & MCDANIEL 235 East Weber Avenue Stockton, CA 95202 ngmplcs@pacbell.net dantejr@pacbell.net</p>	<p><u>VIA ELECTRONIC MAIL</u></p> <p>California Department of Water Resources Robin McGinnis, Attorney P.O. Box 942836 Sacramento, CA 94236-0001 robin.mcginis@water.ca.gov</p>
<p><u>VIA ELECTRONIC MAIL</u></p> <p>Richard Morat 2821 Berkshire Way Sacramento, CA 95864 rmorat@gmail.com</p>	<p><u>VIA ELECTRONIC MAIL</u></p> <p>San Joaquin Tributaries Authority Tim O'Laughlin Valerie C. Kincaid O'Laughlin & Paris LLP 2617 K Street, Suite 100 Sacramento, CA 95816 towater@olaughlinparis.com vkincaid@olaughlinparis.com</p>

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<u>VIA ELECTRONIC MAIL</u>	<u>VIA ELECTRONIC MAIL</u>
South Delta Water Agency John Herrick Law Offices of John Herrick 4255 Pacific Avenue, Suite 2 Stockton, CA 95207 Email: Jherrlaw@aol.com	State Water Contractors Stefani Morris 1121 L Street, Suite 1050 Sacramento, CA 95814 smorris@swc.org