

Farwell Jensen, Jane@Waterboards

From: Tauriainen, Andrew@Waterboards
Sent: Monday, January 25, 2016 12:37 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: RE: WSID CDO Hearing BBID ACL Hearing - PT Objections to WSID Amended NOI

The Prosecution Team hereby requests response from WSID as to whether it intends to comply with the Subpoena served on January 23. If the Prosecution Team does not receive a response by noon on Tuesday, January 26, 2016, it will assume that WSID does not intend to comply. In that case, the Prosecution Team may seek an order compelling those records.

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From: Tauriainen, Andrew@Waterboards
Sent: Saturday, January 23, 2016 11:30 PM
To: wrhearing@waterboards.ca.gov; Dan Kelly (dkelly@somachlaw.com); Jeanne Zolezzi; Karna Harrigfeld; 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); 'tewater@olaughlinparis.com'; Herrick, John @aol.com (jherrlaw@aol.com); Dean Ruiz (dean@hprlaw.net); Stefanie Morris (smorris@swc.org); O'Hanlon, Daniel; Akroyd, Rebecca; 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

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.

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