

## Farwell Jensen, Jane

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**Subject:** Clarifications-BYRON BETHANY IRRIGATION DISTRICT AND WEST SIDE IRRIGATION DISTRICT HEARINGS

### Hearing Participants:

The Hearing Team appreciates the questions from the parties regarding the document submittal deadlines for the Byron-Bethany Irrigation District (BBID) and The West Side Irrigation District (WSID) proceedings. This letter clarifies the various document submittal deadlines and the substance of the submittals in the two proceedings.

The Board will accept the following motions and legal briefings:

#### **(1) Motions to dismiss and/or motions for summary judgment.**

Motions to dismiss or motions for summary judgment may be submitted by BBID in the BBID proceeding and by WSID in the WSID proceeding. The Prosecution Team may file a motion for summary judgment in both proceedings. The motions must be received by the Board **by Noon, January 25, 2016**. The briefs may not exceed ten pages in length. The motions may include a motion for summary judgment; at the parties' discretion, the motions may address evidence submitted to the Board and need not be strictly based on the allegations in the Administrative Civil Liability Complaint or draft Cease and Desist Order.

All other parties may submit responsive briefs in support or opposition to the motions, to be received by the Board by **Noon, February 22, 2016**. Responsive briefs may not exceed ten pages in length. Alternatively, parties may file a joint responsive brief of up to twenty pages in length.

#### **(2) Pre-hearing briefing of legal issues. (BBID proceeding only)**

In the ruling of October 30, 2015, Hearing Officer Doduc requested briefing of two legal issues in the BBID proceeding:

*Whether, and in what circumstances: (1) does the State Water Resources Control Board have the authority to curtail, and (2) does Water Code section 1052 apply to diversions made under claim of a pre-1914 or riparian water right?*

The briefs should address the extent to which these legal issues are or are not relevant to and determinative of the Administrative Civil Liability Complaint issued against BBID. The briefs must be received by the Board by **Noon, January 25, 2016**. The briefs may not exceed ten pages in length. Alternatively, parties may file a joint brief of up to twenty pages in length.

The parties may submit responsive briefs, to be received by **Noon, February 22, 2016**. Responsive briefs may not exceed ten pages in length. Alternatively, parties may file a joint responsive brief of up to twenty pages in length.

The submission of these additional pre-hearing briefs regarding legal issues was authorized only in the BBID proceeding and only with respect to the listed issues. The parties may raise additional legal issues relevant to the WSID or BBID proceedings in their written opening statement, or in a motion to dismiss, motion for summary judgment, or response to a motion, as applicable.

### **(3) Motions in limine.**

The parties may submit motions in limine, to be received by the Board by **Noon, February 29, 2016**. All such motions must be submitted as a single document and may not exceed ten pages in length, total. Alternatively, parties may file motions jointly, not to exceed twenty pages in length.

The parties may submit responsive briefs in support or opposition to the motions, to be received by the Board by **Noon, March 4, 2016**. Responsive briefs may not exceed ten pages in length. Alternatively, parties may file a joint responsive brief of up to twenty pages in length.

### **(4) Written opening statements: Phase I, Phase II – BBID, and Phase II - WSID.**

At this time, the hearing team anticipates that the parties may submit a separate written opening statement for each of the following phases of the proceedings: Phase I, Phase II-BBID, and Phase II – WSID. Written opening statements must be received by the Board by **Noon, February 29, 2016**. Each opening statement may not exceed ten pages in length. Alternatively, parties may file a joint opening statement of up to twenty pages in length. Opening statements should state the objectives of the case-in-chief, the major points that the proposed evidence is intended to establish, and the relationship between the major points and the key issues. Any policy-oriented statements by a party should also be included in the opening statement. The written opening statements may include legal arguments.

Any written response to opening statements should be included in the closing brief.

The format for written opening statements may be addressed further at the pre-hearing conference on February 8, 2016.

### **(5) Closing briefs.**

In addition to the briefing papers described above, the hearing officers will allow submission of closing briefs. The phases of the proceedings to be addressed in each closing brief, page limits, and deadlines for these briefs will be set at the conclusion of the hearing in each of the proceedings, respectively. The parties should address only those facts and legal arguments previously raised. At this time, the hearing officers do not expect to allow responses to closing briefs.

All briefs must be double-spaced and in 12-point Arial, or equivalent, font. Three copies of each brief must be submitted to the State Water Board, and a copy must be served electronically on each of the other participants on the service list.

If you have additional questions regarding non-controversial procedural matters, please contact Staff Counsel Nicole Kuenzi at (916) 322-4142 or by email to [Nicole.Kuenzi@waterboards.ca.gov](mailto:Nicole.Kuenzi@waterboards.ca.gov); or Ernie Mona at (916) 341-5359 or by email to [Ernie.Mona@waterboards.ca.gov](mailto:Ernie.Mona@waterboards.ca.gov); or to Jane Farwell-Jensen at (916) 341-5349 or by email to [Jane.Farwell-Jensen@waterboards.ca.gov](mailto:Jane.Farwell-Jensen@waterboards.ca.gov). (Gov. Code, § 11430.20, subd. (b).)

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