

VIA EMAIL

February 4, 2016

Hearing Officer Frances Spivy-Weber
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-2000

Re: The West Side Irrigation District Cease and Desist Order Hearing

Dear Hearing Officer Spivy-Weber:

The West Side Irrigation District is filing the attached Revised Exhibit Identification Exhibits and two additional exhibits in accordance with the February 1, 2016 Procedural Ruling:

We are aware that a final production of documents has been made by our legal office in response to the requests for public records by BBID and WSID. This production was made on January 20, 2016, the day after the deadline for submission of cases-in-chief. The parties may supplement their exhibits based on these most recently produced documents, if the amendments or additional exhibits are received by the Board by noon on February 4, 2016. Those parties seeking to supplement their submitted exhibits must demonstrate why the information or document could not have been submitted by the deadline of January 19, 2016.

WSID was unable to submit the two attached exhibits by the deadline of January 19, 2016 because the documents were not made available to WSID until January 20, 2016, the day after the deadline for submission of cases-in-chief.

Very truly yours,



JEANNE M. ZOLEZZI
Attorney-at-Law

cc: Attached Service List

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

<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>THE WEST SIDE IRRIGATION DISTRICT Jeanne M. Zolezzi Karna Harrigfeld Janelle Krattiger Herum\Crabtree\Suntag 5757 Pacific Ave., Suite 222 Stockton, CA 95207 jzolezzi@herumcrabtree.com kharrigfeld@herumcrabtree.com jkrattiger@herumcrabtree.com</p>
<p>STATE WATER CONTRACTORS Stephanie Morris 1121 L Street, Suite 1050 Sacramento, CA 95814 smorris@swc.org</p>	<p>WESTLANDS WATER DISTRICT Daniel O'Hanlon Rebecca Akroyd Kronick Moskovitz Tiedemann & Girard 400 Capitol Mall, 27th Floor Sacramento, CA 95814 dohanlon@kmtg.com rakroyd@kmtg.com Philip Williams of Westlands Water District pwilliams@westlandswater.org</p>
<p>SOUTH DELTA WATER AGENCY John Herrick, Esq. 4255 Pacific Ave., Suite 2 Stockton, CA 95207 jherrlaw@aol.com Dean Ruiz Harris, Perisho & Ruiz, Attorneys at Law 3439 Brookside Road, Suite 210 Stockton, CA 95219 dean@hprlaw.net</p>	<p>CENTRAL DELTA WATER AGENCY Jennifer Spaletta Spaletta Law PC PO Box 2660 Lodi, CA 95241 jennifer@spalettalaw.com Dante Nomellini and Dante Nomellini, Jr. Nomellini, Grilli & McDaniel ngmplcs@pacbell.net dantejr@pacbell.net</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>SAN JOAQUIN TRIBUTARIES AUTHORITY Valerie Kincaid O'Laughlin & Paris LLP 2617 K Street, Suite 100 Sacramento, CA 95814 vkincaid@olaughlinparis.com</p>
<p>CALIFORNIA DEPARTMENT OF WATER RESOURCES Robin McGinnis, Attorney PO Box 942836 Sacramento, CA 94236-0001 robin.mcginnis@water.ca.gov</p>	<p>BYRON BETHANY IRRIGATION DISTRICT Daniel Kelly Somach Simmons & Dunn 500 Capitol Mall, Suite 1000, Sacramento, CA 95814 dkelly@somachlaw.com</p>

**SERVICE LIST OF PARTICIPANTS
 BYRON-BETHANY IRRIGATION DISTRICT
 ADMINISTRATIVE CIVIL LIABILITY HEARING
 (October 22, 2015)**

<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\Su;ntag 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 Robert E. Donlan Ellison, Schneider & Harris L.L.P. 2600 Capitol Avenue, 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 Dante Nomellini and Dante Nomellini, Jr. Nomellini, Grilli & McDaniel ngmplcs@pacbell.net dantejr@pacbell.net</p>	<p>CALIFORNIA DEPARTMENT OF WATER RESOURCES Robin McGinnis, Attorney PO Box 942836 Sacramento, CA 94236-0001 robin.mcginnis@water.ca.gov</p>
<p>Richard Morat 2821 Berkshire Way Sacramento, CA 95864 rjmorat@gmail.com</p>	<p>SAN JOAQUIN TRIBUTARIES AUTHORITY Valerie Kincaid O'Laughlin & Paris LLP 2617 K Street, Suite 100 Sacramento, CA 95814 vkincaid@olaughlinparis.com lwood@olaughlinparis.com</p>
<p>STATE WATER CONTRACTORS Stephanie Morris 1121 L Street, Suite 1050 Sacramento, CA 95814 smorris@swc.org</p>	<p>SOUTH DELTA WATER AGENCY John Herrick, Esq. 4255 Pacific Ave., Suite 2 Stockton, CA 95207 jherrlaw@aol.com Dean Ruiz Harris, Perisho & Ruiz, Attorneys at Law 3439 Brookside Road, Suite 210 Stockton, CA 95219 dean@hpplaw.net</p>

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PROOF OF SERVICE

I, PEGGY GARCIA, certify and declare as follows:

I am over the age of 18 years, and not a party to this action. My business address is 5757 Pacific Avenue, Suite 222, Stockton, California 95207. On the date set forth below, I served the following document(s):

- 1. COVER LETTER TO HEARING OFFICER FRANCES SPIVY-WEBER, STATE WATER RESOURCES CONTROL BOARD;
- 2. REVISED EXHIBIT LIST;
- 3. WSID0159, ATTACHMENT TO JULY 10, 2015 EMAIL FROM FELICIA MARCUS TO MOLLY STRAUSS;
- 4. WSID0160, ATTACHMENT TO JUNE 11, 2015 EMAIL FROM TOM HOWARD TO NANCY AQUINO.

BY U.S. MAIL with the United States Postal Service in a sealed envelope, with postage thereon fully prepaid.

BY ELECTRONIC MAIL (EMAIL) - By sending the document(s) to the person(s) at the email address(es) listed below.

SEE SERVICE LIST OF PARTICIPANTS

BY FEDERAL EXPRESS/OVERNIGHT MAIL in a sealed envelope, with postage thereon fully prepaid. [Code Civ. Proc., §§ 1013(c), 2015.5.]

BY PERSONAL SERVICE/HAND DELIVERY.

BY FACSIMILE at approximately _____ .m. by use of facsimile machine telephone number (209) 472-7986. I caused the facsimile machine to print a transmission record of the transmission, a copy of which is attached to this declaration. The transmission was reported as complete and without error. [Cal. Rule of Court 2008 and 2003(3).]

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

Dated: February 4, 2016

PEGGY GARCIA

Exhibit Identification Index
REVISED February 4, 2016
 BBID ACL/WSID CDO Hearings

Participants: West Side Irrigation District, South Delta Water Agency, Central Delta Water Agency

Exhibit ID Number	Phase	Exhibit Description	Status of Evidence (for Hearing Team use Only)		
			Introduced	Accepted	By Official Notice
WSID0001	Phase 1, WSID2	Map of WSID intake canal facilities			
WSID0002	Phase 1, WSID2	Map of WSID with canals			
WSID0003	Phase 1, WSID2	Map of WSID POD and City of Tracy Discharge			
WSID0004	Phase 1, WSID2	Second Map of WSID with canals			
WSID0005	Phase 1, WSID2	WSID License 1381			
WSID0006	All	Department of Public Works Bulletin No. 21-B dated 1929			
WSID0007	All	October 9, 1933 State of California Department of Public Works letter			
WSID0008	All	DWR Water Supervisor's Report for 1931			
WSID0009	Phase 1, WSID2	July 1985 License 1381 Inspection Report			
WSID0010	All	DWR Sacramento-San Joaquin Delta Atlas			
WSID0011	WSID2	August 1924 Report on Drainage prepared by Thomas H. Means Engineering			
WSID0012	WSID2	2010 Drainage Agreement between the Tracy and WSID			
WSID0013	WSID2	Tracy November 2012 Citywide Storm Drainage Master Plan			
WSID0014	WSID2	1937 California Lands deed to WSID			
WSID0015	WSID2	1947 Costa deed to WSID			
WSID0016	WSID2	1948 NBID deed to WSID			

Exhibit ID Number	Phase	Exhibit Description	Status of Evidence (for Hearing Team use Only)		
			Introduced	Accepted	By Official Notice
WSID0017	WSID2	September 21, 1998 WSID letter to SWRCB			
WSID0018	WSID2	September 25, 1998 WSID letter to SWRCB			
WSID0019	WSID2	Tracy NPDES permit			
WSID0020	1, WSID2	Excel spreadsheet submitted by Tracy to SWRCB			
WSID0021	WSID2	April 2011 City of Tracy Urban Water Management Plan			
WSID0022	WSID2	May 6, 2014 Tracy Resolution 2014-165			
WSID0023	WSID2	The 2014 Agreement between WSID and Tracy			
WSID0024	WSID2	March 3, 2015 Tracy Resolution 2015-033			
WSID0025	WSID2	The 2015 Agreement between WSID and Tracy			
WSID0026	WSID2	July 7, 2015 termination letter from Tracy to WSID			
WSID0027	WSID2	Legislative Intent Declaration			
WSID0028	WSID2	Reclamation districts map, San Joaquin County, 4-22-2015			
WSID0029	Phase 1	DWR-Delta Overview			
WSID0030	Phase 1	SLDMWA-Exchange Contractors Agreement 2015			
WSID0031	Phase 1	USGS Watershed Boundary Dataset Report			
WSID0032	Phase 1	DWR FNF Powerpoint			
WSID0033	Phase 1	1995 Settlement Agreement in New Don Pedro FERC Proceeding			
WSID0034	Phase 1	USBR Settlement Contractors letter 4-21-2015			
WSID0035	Phase 1	NCWA Sacramento Valley District map			
WSID0036	Phase 1	Appendix to Drought '77 - Dry Year Program - March 1978			
WSID0037	Phase 1	GCID District map			

Exhibit ID Number	Phase	Exhibit Description	Status of Evidence (for Hearing Team use Only)		
			Introduced	Accepted	By Official Notice
WSID0038	Phase 1	Bulletin_168 (1978)			
WSID0039	Phase 1	Butte WD - drought letter 2015			
WSID0040	Phase 1	DWR Bulletin 132-09			
WSID0041	Phase 1	DWR Feather River Final Settlement Agreement			
WSID0042	Phase 1	DWR California Central Valley Unimpaired Flow Data Report (May 2007)			
WSID0043	Phase 1	CH2M-hill MBK Sacramento Valley Water Efficiency Report			
WSID0044	Phase 1	Sacramento Valley Regional Water Management Plan Annual Update 2010-11			
WSID0045	Phase 1	SRSC SVRWMP Update Submittal Letter - January 7 2013			
WSID0046	Phase 1	USBR Environmental Assessment for SRSC water use extension			
WSID0047	Phase 1	Madera ID_SBx7-7_2013-12-18			
WSID0048	Phase 1	Turlock ID Final AWMP 12-11-2012			
WSID0049	Phase 1	Merced ID Ag Water Management Plan Final			
WSID0050	Phase 1	Grasslands Bypass Project Monthly Report Master 2015 Jan-Jun final			
WSID0051	Phase 1	Oakdale ID 2012 AWMP			
WSID0052	Phase 1	S. San Joaquin ID Final 2012 AWMP 2012			
WSID0053	Phase 1	USBR-Water Management Planner 2014			
WSID0054	Phase 1	MID map			

Exhibit ID Number	Phase	Exhibit Description	Status of Evidence (for Hearing Team use Only)		
			Introduced	Accepted	By Official Notice
WSID0055	Phase 1	20150610_sacsjcombined.xlsx			
WSID0056	Phase 1	SSJID AWMP 2015			
WSID0057	Phase 1	1969 Joint Board - DWR Agreement			
WSID0058	Phase 1	DWR Unimpaired Inflow Report			
WSID0059	WSID2	Kathy Bare deposition transcript			
WSID0060	Phase 1, WSID2	Written Testimony of Rick Martinez			
WSID0061	Phase 1	A011900 2013 Report of Licensee			
WSID0062	Phase 1	A011900 2014 Report of Licensee			
WSID0063	Phase 1	A011900 license			
WSID0064	Phase 1	S014982 2013 Supplemental Statement Of Water Diversion And Use			
WSID0065	Phase 1	S014982 2014 Supplemental Statement Of Water Diversion And Use			
WSID0066	Phase 1	S014982			
WSID0067	Phase 1	S014983 2013 Supplemental Statement Of Water Diversion And Use			
WSID0068	Phase 1	S014983 2014 Supplemental Statement Of Water Diversion And Use			
WSID0069	Phase 1	S014983			
WSID0070	Phase 1	SWRCB GIS map			
WSID0071	Phase 1	City of Stockton MUD MOMR June 2015			
WSID0072	Phase 1	City of Stockton MUD MOMR June 2013			

Exhibit ID Number	Phase	Exhibit Description	Status of Evidence (for Hearing Team use Only)		
			Introduced	Accepted	By Official Notice
WSID0073	Phase 1	City of Stockton MUD MOMR June 2014			
WSID0074	Phase 1	City of Turlock ww0088 maps			
WSID0075	Phase 1	City of Turlock ww0088 petition			
WSID0076	Phase 1	Drought 77 - 1-24-14			
WSID0077	Phase 1	Final Wastewater Master Plan February 2012			
WSID0078	Phase 1	Maxwell A011957 SWRCB GIS map			
WSID0079	Phase 1	2015 IO Actual Demands.xlsx			
WSID0080	Phase 1	Maxwell Irrigation 2013 REPORT OF LICENSEE			
WSID0081	Phase 1	Maxwell Irrigation District I004644 a011957			
WSID0082	Phase 1	Meridian 2013 report of licensee			
WSID0083	Phase 1	Meridian 2014 report of licensee			
WSID0084	Phase 1	Meridian A009737 SWRCB GIS map			
WSID0085		WY 2014-2015 CDEC Supply Tables.xlsx			
WSID0086	Phase 1	Meridian I007160 a009737			
WSID0087	Phase 1	MID Return Flows to Rivers, 2000-2015			
WSID0088	Phase 1	MID 2015 AWMP Final			
WSID0090	Phase 1	Order no. R5-2009-0010			
WSID0091	Phase 1	S007368 2013 supplemental statement of water diversion and use			
WSID0092	Phase 1	S007368			
WSID0093	Phase 1	SWRCB UW supplier data 120115			

Exhibit ID Number	Phase	Exhibit Description	Status of Evidence (for Hearing Team use Only)		
			Introduced	Accepted	By Official Notice
WSID0094	Phase 1	Wastewater Utility Master Plan 2012			
WSID0095	Phase 1	Woodland Final 2010			
WSID0096	All	DWR June 1969 Memorandum Report_The Delta & the SWP			
WSID0097	All	Water Right Decision 100			
WSID0098	All	Water Right Decision 1379			
WSID0099	All	Written Testimony of Karna Harrigfeld			
WSID0100	All	NDWA Contract			
WSID0101	All	Map of FNF Stations and Legal Delta Boundary (Bonsignore Figure 2A)			
WSID0102	All	Map of FNF and UF Watersheds (Bonsignore Figure 2J)			
WSID0103	All	Map of Sacramento San Joaquin Watershed and Legal Delta Boundary			
WSID0104	Phase 1	Map of Locations of Water Rights Used in Demand Analysis Sacramento Watershed (Deposition Exhibit 9)			
WSID0105	Phase 1	Map of Locations of Water Rights Used in Demand Analysis San Joaquin Watershed (Deposition Exhibit 80)			
WSID0106	Phase 1	2015 San Joaquin River Basin Supply/Demand Chart dated April 21, 2015 (Deposition Exhibit 43)			
WSID0107	Phase 1	2015 Sacramento River Basin Supply/Demand Chart dated 4/29/2015 (Deposition Exhibit 10)			
WSID0108	Phase 1	2015 Sacramento River Basin Supply/Demand Chart dated May 1, 2015 (Deposition Exhibit 30)			

Exhibit ID Number	Phase	Exhibit Description	Status of Evidence (for Hearing Team use Only)		
			Introduced	Accepted	By Official Notice
WSID0109	Phase 1	Demand Summary from May 1, 2015 Excel spreadsheet (Deposition Exhibit 31)			
WSID0110	Phase 1	2015 Combined Sacramento San Joaquin River Senior Supply/Demand Chart dated June 10, 2015 (Deposition Exhibit 85)			
WSID0111	Phase 1	2015 Sacramento River Basin Senior Supply/Demand Analysis with Proportional Delta Demand Chart from June 10, 2015 file (Deposition Exhibit 28)			
WSID0112	Phase 1	Senior Demand Summary from June 10, 2015 Excel spreadsheet (Deposition Exhibit 29)			
WSID0113	Phase 1	May 21, 2015 SWRCB staff emails (Deposition Exhibit 48)			
WSID0114	Phase 1	May 22-26, 2015 SWRCB staff emails (Deposition Exhibit 49)			
WSID0115	Phase 1	June 2, 2015 Email Mrowka to Kostyrko (Deposition Exhibit 51)			
WSID0116	Phase 1	June 12, 2015 SWRCB staff Emails (Deposition Exhibit 70)			
WSID0117	Phase 1	June 21, 2015 Email from Kostyrko to Evoy (Deposition Exhibit 50)			
WSID0118	Phase 1	Department of Public Works Water Supervisors Report for Year 1931 (Deposition Exhibit 86)			
WSID0119	Phase 1	Sacramento Basin Charts with WRUDS 2015-05-01.xlsx			
WSID0120	Phase 1	20150610_sacprorated.xlsx			
WSID0121	All	Written Testimony of Nicholas F. Bonsignore, P.E.			

Exhibit ID Number	Phase	Exhibit Description	Status of Evidence (for Hearing Team use Only)		
			Introduced	Accepted	By Official Notice
WSID0122	All	Expert Report of Nicholas F. Bonsignore, P.E.			
WSID0123	All	Written Testimony of Thomas Burke, P.E.			
WSID0124	All	Expert Report of Thomas Burke, P.E.			
WSID0125	WSID2	Technical Memorandum of Thomas Burke, P.E. re WSID Diversions			
WSID0126-0149		Intentionally omitted			
WSID0150	All	Deposition of Brian Coats			
WSID0151	All	Deposition of Jeffrey Yeazel			
WSID0152	All	Deposition of Katherine Mrowka			
WSID0153	All	Deposition of John O'Hagan vol. 1			
WSID0154	All	Deposition of John O'Hagan vol. 2			
WSID0155	All	Deposition of Thomas Howard vol. 1			
WSID0156	All	Deposition of Thomas Howard vol. 2			
WSID0157	All	Deposition of Michael George			
WSID0158	All	Written Testimony of Jack Alvarez			
WSID0159	Phase 1	Attachment to July 10, 2015 email from Felicia Marcus to Molly Strauss			
WSID0160	Phase 1	Attachment to June 11, 2015 email from Tom Howard to Nancy Aquino			

Weaver, Nathan@Waterboards

From: Felicia Marcus <feliciaamarcus@aol.com>
Sent: Friday, July 10, 2015 8:47 PM
To: Molly Strauss
Cc: Barrios, Alicia@Waterboards; David Abel; Marcus, Felicia@Waterboards
Subject: Re: The Planning Report / David Abel Interview Transcript
Attachments: Marcus TPR July 10.docx

Here ya go. Thanks!

On Jul 10, 2015, at 4:08 PM, Molly Strauss wrote:

Thanks, Felicia! We plan to go to print on Monday, so if you could have it to us by Monday morning, that should work just fine.

All the best,

Molly Strauss

Editor

The Planning Report, Metro Investment Report

mstrauss@ablinc.net

(213) 629-9019

planningreport.com

metroinvestmentreport.com

From: Felicia Marcus <feliciaamarcus@aol.com>
Date: Friday, July 10, 2015 at 3:35 PM
To: Editor 1 <mstrauss@ablinc.net>
Cc: "Barrios, Alicia@Waterboards" <Alicia.Barrios@Waterboards.ca.gov>, David Abel <david@ablinc.net>
Subject: Re: The Planning Report / David Abel Interview Transcript

Hi Molly. I did my edits yesterday but my lawyers wanted to make a couple of changes (water rights is touchy right now). They are working on it but it was a hectic day with some court rulings. Haven't forgotten!

Felicia

Sent from my iPad

On Jul 10, 2015, at 11:37 AM, Molly Strauss <mstrauss@ablinc.net> wrote:

Hi Felicia,

Just a reminder—we'd appreciate if you could get edits back to us today. Many thanks for accommodating the quick turn-around!

All the best,

Molly Strauss

Editor

The Planning Report, Metro Investment Report

mstrauss@ablinc.net

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From: Felicia Marcus <feliciaamarcus@aol.com>
Date: Wednesday, July 8, 2015 at 10:27 PM
To: Editor 1 <mstrauss@ablinc.net>
Cc: "Barrios, Alicia@Waterboards" <Alicia.Barrios@Waterboards.ca.gov>, David Abel <david@ablinc.net>
Subject: Re: The Planning Report / David Abel Interview Transcript

Will do my best to do tomorrow am on train!

Sent from my iPad

On Jul 8, 2015, at 11:13 AM, Molly Strauss <mstrauss@ablinc.net> wrote:

Felicia,

On behalf of David Abel, thank you for the opportunity to interview you for our upcoming issue of *The Planning Report*.

We've transcribed and edited the interview (attached) and welcome technical corrections. You'll notice that certain phrases are highlighted in yellow—this indicates a place where the recording was unclear, or a place where clarification could be helpful.

This is still a draft, and we will be doing two more proof-reads before making it public.

If you could return this to us by **this Friday morning** (or, ideally, before then), we would appreciate it, as our coming issue goes to print shortly thereafter. We know this is a quick turn-around and appreciate your assistance. Many thanks!

All the best,

Molly Strauss

Editor

The Planning Report, Metro Investment Report

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WE'VE MOVED!

Our office has relocated to:

700 South Flower Street, Suite 650

Los Angeles, CA 90017

All other contact information remains the same

T: (213) 629-9019 F: (213) 623-9207

www.planningreport.com

<Marcus TPR.docx>

Weaver, Nathan@Waterboards

From: Felicia Marcus <feliciaamarcus@aol.com>
Sent: Wednesday, July 08, 2015 10:27 PM
To: Marcus, Felicia@Waterboards
Subject: Fwd: The Planning Report / David Abel Interview Transcript
Attachments: Marcus TPR.docx

Sent from my iPad

Begin forwarded message:

From: Molly Strauss <mstrauss@ablinc.net>
Date: July 8, 2015, 11:13:52 AM PDT
To: "Barrios, Alicia@Waterboards" <Alicia.Barrios@Waterboards.ca.gov>, "Felicia Marcus" <feliciaamarcus@aol.com>
Cc: David Abel <David@ablinc.net>
Subject: **The Planning Report / David Abel Interview Transcript**

Felicia,

On behalf of David Abel, thank you for the opportunity to interview you for our upcoming issue of *The Planning Report*.

We've transcribed and edited the interview (attached) and welcome technical corrections. You'll notice that certain phrases are highlighted in yellow—this indicates a place where the recording was unclear, or a place where clarification could be helpful.

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All the best,

Molly Strauss

Editor

The Planning Report, Metro Investment Report

mstrauss@ablinc.net

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planningreport.com

metroinvestmentreport.com

WE'VE MOVED!

Our office has relocated to:

**700 South Flower Street, Suite 650
Los Angeles, CA 90017**

Reviewers:

Red: Howard, Tom@Waterboards

Blue: Felicia@Waterboards
Marcus, Felicia@Waterboards

Hi Felicia,

Thank you all so much for taking the time to go into such depth with me on California water rights and the water board. Below are some of my takeaways from our conversation, as well as some other information I've read online. I'd appreciate it if you and/or Tom could look this over, see if I've got it all right and if there's anything you'd like to add.

From our conversation:

- The 2009 water reform package required pre-1914 appropriators to report their water usage for the first time. They are required to report monthly data every three years.
- The Davis study overstates the overallocation problem because it assumes that the "face Value" of a water right is a reasonable approximation of the amount of water diverted and that is not true. "face value" far exceeds the amount of water actually diverted.
- The Davis study overstates the overallocation problem because it doesn't take into consideration return flows from diversions, cycled water.
- The Davis study is a bit...alarmist-simplistic/overstated because not everyone uses their allocation at the exact same time, and not everybody uses their entire allocation all the time.
- Applicants may be are granted a permit if water is available 50 percent of the time or more. (Applicants receiving permits when water is not always available are usually required to show they have alternate sources if the proposed use is likely to require water every year.) By nature, that builds in a certain amount of overallocation, which is why there is a seniority system. Junior water rights holders know that there isn't always enough water for them and that they can be curtailed in favor of more senior water rights holders. Sometimes there is more than enough to meet allocations, except in a few areas.
- The permit-to-license process helps square away expected use (from the permit) to actual use (verified by water board inspectors).
- The licensing process has slowed down a lot in recent years, as the board has put more resources toward the permitting process, where there can be more impact on conservation through public trust flow negotiationsdeterminations.
- California does not require senior users to "call" their upcoming usage, but that's something the board is consideringas they do in other states.
- The board is testing out satellite data in the Delta, but this kind of satellite (and sensor) technology is not widespread in California the way it is in Idaho and certain other states. (Satellite technology is broadly used in water resource planning in California but it is not used to manage the water right system at this time.)
- Do you think it's fair to say that managing water in CA in times of drought is made harder because the accounting of appropriation on paper doesn't match use? We do the best we can with the data we have, which while much better than it

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was before the 2009 legislation took effect, miles better, could still be better and allow for a more real-time and granular implementation of water rights at a more fine scale as between water users. We have monthly historical use data for all water right holders now and we believe this data does match use in general.

Fact-checking from other sources:

- The California Department of Water Resources publishes water supply projections from February to May.
- Those projections are available monthly.
- Some water flow records are embargoed, including those from hydropower utilities.
- Add the paragraph from the dry year report?

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Lastly, I have a follow up question. To what extent do appropriate rights holders report their actual use? Are the reports current and accurate enough to give the board enough information to manage water as efficiently as possible? What kinds of reporting requirements would you like to see? We have monthly use data for all water right holders which is submitted to us under penalty of perjury. This data is submitted to us annually by post 1914 water right holders and every three years by riparians and pre 1914s. As with any data set there are likely reporting errors but we use this information to estimate demand in watersheds throughout the state and to curtail water right holders when this demand exceeds supply. Better data is always preferable. Monthly data could be reported on a monthly basis and for large water right holders telemetry could be used to stream the data on a real time basis.

Thanks so much. This is a very nuanced issue, and I'm relatively new to water rights in general, so it's very important to me I get all the facts 100 percent locked down and don't iron out too many of the nuances in trying to communicate to readers.

Cheers,
Rachael

--
Rachael Bale
The Center for Investigative Reporting
Office: [510-982-2883](tel:510-982-2883)
Cell: [949-436-2588](tel:949-436-2588)

We have a new website! Visit us at revealnews.org.

Weaver, Nathan@Waterboards

From: Howard, Tom </O=MMS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=HOWARD, TOM@WATERBO97BB8206-7061-4BF7-B503-158A6481C1EA139>
Sent: Thursday, June 11, 2015 12:49 PM
To: Aquino, Nancy@Waterboards
Subject: FW: Curtailment Package
Attachments: Curtailment Press Releaseblefinal 06102015.docx; image001.png; image002.jpg; finalQAs for pre-1914 ble(3).docx; Sacramento + Proportional Delta PRE-14 Supply-Demand Analysis Web 2015-0....pdf; Sacramento + N Delta PRE-14 Supply-Demand Analysis Web 2015-06-10.pdf; Sacramento-San Joaquin PRE-14 Supply-Demand Analysis Web 2015-06-10.pdf; San Joaquin + Proportional Delta PRE-14 Supply-Demand Analysis Web 2015-....pdf; Pre-14 Combined Curtailment Letter - Cleanble.docx

From: Evoy, Barbara@Waterboards
Sent: Wednesday, June 10, 2015 1:10 PM
To: Howard, Tom
Cc: Trgovcich, Caren@Waterboards; O'Hagan, John@Waterboards; Mrowka, Kathy@Waterboards; Grober, Les@Waterboards
Subject: FW: Curtailment Package

Tom – attached is the full package of curtailment info. I believe you were intending to send the Press Release and the Pre-14 combined curtailment letter to Wade as a head up. We are ready to get the letter going as soon as you sign or give us the electronic approval. We can send tomorrow or Friday (the letter and press release are currently dated June 11). Your choice given the rain.

From: O'Hagan, John@Waterboards
Sent: Wednesday, June 10, 2015 12:19 PM
To: Evoy, Barbara@Waterboards
Cc: Mrowka, Kathy@Waterboards; Evoy, Barbara@Waterboards
Subject: Curtailment Package

Here are the documents for Tom

John O'Hagan
Assistant Deputy Director, Water Rights
State Water Resources Control Board
916-341-5368



Questions and Answers
Pre-1914 Curtailment

- How did you determine that there was no water for me to divert? When I look at the stream, I see plenty of water.

Water going by your point of diversion also flows to other downstream users. These users may have a higher priority right than you or the water may not be the type of flow (source) you are allowed to divert. Riparian users almost always have higher priority to natural flow than appropriative water rights. A post or pre-1914 appropriative water right holder is not allowed to divert natural flow when more senior riparian water rights holders are not getting their full amounts. Reservoir releases of stored water, intended for water quality needs or specific customers are other examples of water that is not available to you.

The State Water Board analyzes water right demands by priority of right and available supply. We rely on the best available water supply information. Detailed information is generally available for major tributaries but often not available for smaller tributaries. For this reason, we work closely with stakeholders in water short basins to confirm and validate the demand and supply information. Before initiating curtailments, the State Water Board shares its findings with stakeholder groups and seeks feedback. The supply and demand information is available for review and the supply/demand curves are updated and posted on our website for review.

- My property is located in the Delta. There is water all around. Why can't I just use that water?

Water in the Delta is a complex mixture of reservoir releases by the State Water Project and Central Valley Project (the "Projects"); natural flows, return flows from upstream irrigation or other uses, and other sources. Reservoir releases of stored water by the Projects for use under contracts, transfers, or for State Water Board permitted salinity, export, and fish and wildlife needs are not subject to appropriation by others. The State Water Board realizes there is some disagreement regarding the availability of water in the Delta, and will continue to work to resolve these issues. If you received a curtailment notice though, the State Water Board determined that there is insufficient water from the Sacramento-San Joaquin watershed available for your use and you should stop your diversions.

- Why should I comply with a curtailment notice? What happens if I don't do so?

The notice informs diverters about the lack of available water supply to serve their rights. Failure to observe the priority of your water right by ceasing diversion when there is insufficient water to serve your priority of right is unauthorized diversion and use of water. The State Water Board has authority to take enforcement actions if unauthorized diversions are found. These actions can include monetary penalties dating back to the date when there was insufficient water to serve that priority.

- What is the point of stopping my diversions? The neighbor will continue taking water. I will be the only one losing in this situation.

In order to prevent unauthorized use of water, the State Water Board is conducting field inspections and also using the complaint process to confirm compliance. Violations are subject to enforcement, including enhanced penalties during drought. The State Water Board invites the public to file a complaint if they are aware of illegal diversions of water, waste and unreasonable use of water or public trust violations. Your complaint can be confidential.

- I have already voluntarily reduced my water use. Why should I have to do more?

Unfortunately, the water supply situation is so bleak that there will be little or no water in many streams this summer. If you are curtailed, the water you used is needed by a more senior water right holder. Although we realize the difficulties which this causes, the water supply is simply inadequate to meet the needs of all water users. The California water rights system must be used to determine who has a legal right to water in times of shortage.

- What authority do you have to curtail a pre-1914 or riparian water diverter?

The State Water Board has authority to investigate all streams, stream systems, portions of stream systems, lakes or other bodies of water under Water Code section 1051, subd. (a). In drought years, such as 2014 and 2015, the State Water Board can determine when water is not available for certain water rights and that further diversions by such rights could constitute an unauthorized diversion.

- How can you curtail my use when you did not consider site specific information on water supply and demand at my pump?

The curtailment analysis is based on ongoing evaluation of water supply verses demand, and is conducted for major streams and watersheds. This information is compared to projected and real-time gage data. The analysis provides comprehensive information on each watershed that is subject to curtailment. Additionally, the information is shared with stakeholders in the watershed before curtailments and is posted for continued review. The State Water Board uses the best available information but site specific evaluation is not possible during the current drought emergency.

- Why aren't you relying on local self-policing and neighborly sharing of water resources?

The State Water Board is responsible for administering the water rights system. Curtailment is the traditional approach to resolve priority and quantity conflicts. Where local or regional groups can come together and provide the necessary water to all senior and established environmental needs, without causing injury to other users, the Board has shown willingness to consider these proposals.

- I am located where there are several sources of water. Why am I curtailed?

If you are located where there are multiple sources of water or below a confluence of two or more streams, your right to the flows at your point of diversion is limited by the priority of your right. This issue is considered in determining the scale and priority of curtailments.

- Are you curtailing my use, just to provide more water to Delta diverters?

Curtailments are based on the water right priority system, with the limited water supply allocated to the most senior priority diverters. Curtailment is not a tool to provide water to specific areas. The purpose is orderly administration of the water right system.

- Why are you notifying senior rights of insufficiency of supply? No one has filed a complaint stating that they are injured due to drought water use.

The State Water Board administers the California water right system. While fairly and effectively responding to complaints is a significant part of our enforcement role, it is not an efficient way to deal with large scale water shortage during drought on a timely basis. Information must be updated and evaluated on a tributary and watershed basis to give the water users information on projected water availability by priority. Examination of supply/demand data shows that significant water deficits are occurring in multiple watersheds. Thousands of water rights occur in these basins. In order to maintain an orderly system of use, the State Water Board implements curtailments as needed. In the Sacramento/San Joaquin basins, Post-1914 water rights were curtailed first. Now certain pre-1914 water rights are being notified. If supply and demand continues to follow expected patterns, additional (older) pre-1914 water rights will be notified of insufficient water.

- I have a pre-1914 right. Why should I curtail my use when my water right is senior to some riparian diverters?

Riparian rights attach to parcels of lands that meet specific criteria and only apply to the natural flow of the source. Riparian right holders generally have the most senior priority to natural flows in a stream. There is an exception where an appropriation has a priority date before the date the land which is the basis for the riparian right passed into private ownership, but only to the extent the appropriative right has been preserved and is not subject to forfeiture for non-use. Also, an appropriator may make use of abandoned flows while a riparian right holder cannot. Water that has been stored or imported is not available to either riparian or appropriative right holders.

Although the pre-1914 right may be senior to riparian use on a specific parcel of land, it may concurrently be junior to other riparian diverters. The pre-1914 water right cannot be exercised to divert natural flow when there is insufficient natural flow available to serve other riparian rights.