

REBUTTAL TESTIMONY OF PAUL M. WELLS

My rebuttal testimony, herein provided, is the result of my personal review of the exhibits Byron Bethany Irrigation District (BBID) has submitted in this proceeding. I reviewed BBID's exhibits to determine if there was information in those exhibits that would affect my original written testimony (Exhibit WR-15) or my calculation of the Administrative Civil Liability Complaint (ACLC) diversion amount by BBID between June 13, 2015, and June 24, 2015.

After reviewing BBID's exhibits, there is nothing that changes my original written testimony or calculation of the ACLC diversion amount. I do not recommend any adjustments to the calculated ACLC diversion amount of 1,887 af (or 1,829.1 af based on the documents submitted by BBID) as explained in my original written testimony (Exhibit WR-15).

1. Review of BBID Exhibit 201, Written Testimony of Rick Gilmore

I have reviewed BBID Exhibit 201, the written testimony of Rick Gilmore, General Manager for BBID. In portions of his written testimony, Mr. Gilmore discusses BBID's efforts to find alternative water supplies and general concerns about the Administrative Civil Liability (ACL) amount.

On page 4, lines 6 through 8 of his written testimony, Mr. Gilmore states:

In 2004, PVWD [Plain View Water District] was consolidated with BBID. PVWD's Central Valley Project (CVP) Water Services Contract was assigned to BBID. The Water Service Contract provides an entitlement of 20,600 acre-feet of CVP water for irrigation and M&I [municipal and industrial] purposes.

On page 10, lines 4 through 6 of his written testimony, Mr. Gilmore states that for the CVP service area BBID "received a 0% allocation from the Bureau of Reclamation for agricultural water. For M&I uses, BBID received an allocation equal to 50% of its historical use, approximately 500 acre-feet". Mr. Gilmore does not provide any additional information on when or where this water may have been diverted by BBID.

On page 10, line 18 through page 14, line 12 of his written testimony, Mr. Gilmore discusses a variety of efforts made by BBID to find alternative water supplies, including talks with the California Department of Water Resources, talks with Zone 7 Water Agency, talks regarding Yuba Water (State Water Contractors), transfer of water from

Contra Costa Water District, transfer of water from Carmichael Water District, local groundwater transfers, an attempt to appropriate Mountain House Community Services District discharges, and an attempt to purchase Sacramento Regional County Sanitation District discharges. Mr. Gilmore's written testimony and the related exhibits do not provide daily data for any contract water or alternative supply diverted by BBID from the intake channel of the Banks Pumping Plant for the June 13, 2015 to June 24, 2015 timeframe.

Regarding diversions made by BBID for Mountain House and the Mariposa Energy Plant (MEP), Mr. Gilmore states on page 14, lines 19 through 23 of his written testimony:

Second, when I met with Tom Howard and Kathy Mrowka on June 1, 2015 to discuss Mountain House and the MEP, Tom Howard assured me that, given the need to continue to get water to the community of Mountain House and the MEP, the SWRCB would not issue an enforcement action related to the provision of water for those uses. Notwithstanding that assurance, water diverted for Mountain House and MEP is included in the proposed fine.

Mr. Gilmore's written testimony and the related exhibits do not provide any daily data for any water diverted by BBID for Mountain House or MEP from the intake channel of the Banks Pumping Plant.

Regarding Clifton Court Forebay Operations, Mr. Gilmore states on page 5, lines 21 through 25 of his written testimony:

Clifton Court Forebay acts as a regulating reservoir for both the State Water Project and for BBID's pumping facilities. The gates at Clifton Court Forebay are operated on schedules set by DWR, and BBID has no control over the gate operation schedule. However, BBID pumps water from MP 1.83 at the Intake Channel to the Harvey O. Banks Pumping Plant, irrespective of whether the gates are in the open or closed position.

It is my understanding and belief that the State Water Project and BBID are the only entities that divert water out of Clifton Court Forebay. As stated in Section 2 of my original written testimony (Exhibit WR-15):

The CDEC website lists information for a station identifier called "Byron Bethany Irrigation Dist Diversion" or "BBI," which, I understand and believe, reflects BBID's self-reported daily diversion amounts. Diversion amounts for the BBI

Station are publicly available at the following webpage:

<http://cdec.water.ca.gov/cgi-progs/queryDaily?BBI>.

The CDEC website also lists information for a station identifier called “Clifton Court” or “CLC,” which, I understand and believe, reports the daily reservoir inflow into Clifton Court Forebay. Diversion amounts for the CLC Station are publicly available at the following webpage: <http://cdec.water.ca.gov/cgi-progs/queryDaily?CLC>.

Daily inflow values recorded by the CLC gage and daily diversion values measured by the BBI gage and the State Water Project’s Banks Pumping Plant are summarized by the Department of Water Resources in a Delta Hydrology Conditions Report available on the following webpage:

<http://www.water.ca.gov/swp/operationscontrol/docs/delta/DeltaHydrology.pdf>

On June 30, 2015, I downloaded the Delta Hydrology Report for May 31, 2015 through June 29, 2015, a true and correct copy of which is Exhibit WR-242. This Delta Hydrology Report shows that for every day between June 13, 2015 and June 24, 2015, water was flowing into Clifton Court Forebay, water was diverted by BBID, and water was diverted for the State Water Project at the Banks Pumping Plant.

2. Review of BBID Exhibit 242, Written Testimony of Edwin Pattison

I have reviewed BBID Exhibit 242, the written testimony of Edwin Pattison, General Manager of the Mountain House Community Services District (MHCS D).

In paragraph 14 of his written testimony, Mr. Pattison states:

MHCS D was responsible for the design and construction of the MHCS D diversion facility, but ownership was turned over to BBID for operations and maintenance. Water diversions are metered at the diversion facility, the influent meter to the WTP [water treatment plant], and at all connections throughout the community.

Mr. Pattison’s written testimony and the related exhibits do not provide daily data for the water diverted at the metered diversion facility or for the influent meter to the WTP.

In paragraph 24 of his written testimony, Mr. Pattison states:

On June 22, 2015, John O'Hagan emailed Kelly Geyer (Director of Administration at BBID) and me to inform us that, because BBID was the sole provider of Mountain House's water supply, the SWRCB "would expect BBID to pump water to Mountain House for minimal health and safety needs of the community." In this regard, Mr. O'Hagan stated the SWRCB estimates this amount to be "50 gallons per person per day" for health and safety, including fire suppression. Mr. O'Hagan stated that BBID would need to complete a compliance certification form to document its diversion of water for Mountain House's health and safety needs. A true and correct copy of the e-mail is Exhibit BBID245

In paragraph 25 of his written testimony, Mr. Pattison states:

MHCSD did not want BBID to approximate what "50 gallons per person per day" would be for the Mountain House community and then restrict the pumps accordingly. MHCSD made the decision to ask BBID not to override MHCSD's operation of the pump because the very existence of the community of Mountain House was dependent on that that water supply.

Mr. Pattison's written testimony and the related exhibits do not provide daily data for any water diverted by BBID from the intake channel of the Banks Pumping Plant between June 13, 2015 and June 24, 2015 for delivery to the Mountain House community. Moreover, Mr. Pattison's written testimony and the related exhibits do not provide an estimate of the amount of water that would need to be diverted from the intake channel of the Banks Pumping Plant to provide the Mountain House community with 50 gallons per person per day for health and safety purposes, including fire suppression.

3. Review of BBID Exhibits 202 through 241 and BBID Exhibits 243 through 392

I have also reviewed BBID exhibits 202 through 241 and BBID exhibits 243 through 392 to determine if there was any additional information that would require me to adjust the ACLC diversion amount calculated for BBID. These exhibits do not contain any information for the June 13, 2015 to June 24, 2015 timeframe regarding (1) BBID's diversions of contract water or alternative supply water from the intake channel of the Banks Pumping Plant or (2) BBID's delivery of water to the Mountain House community

or the MEP. As a result, it is my understanding and belief that these exhibits do not contain sufficient information to modify the ACLC diversion amount.

4. After Reviewing BBID's exhibits, I Have Found No Evidence to Support Adjusting the Amount of Water BBID was Calculated to Have Diverted between June 13, 2015 and June 24, 2015

As previously discussed in my original written testimony contained in Exhibit WR-15, the water diverted by BBID from the intake channel of the Banks Pumping Plant between June 13, 2015 and June 24, 2015 was calculated to be 1,887 af (or 1,829.1 af based on the documents submitted by BBID in response to the Prosecution Team's document subpoena (Exhibit WR-93 and Exhibit WR-94)). The 1,887 af (or 1,829.1 af) diverted by BBID during the ACLC violations period may be adjusted to account for any water diverted by BBID from the intake channel of the Banks Pumping Plant between June 13, 2015, and June 24, 2015 pursuant to a source other than BBID's claimed pre-1914 appropriative water right as well as any water diverted by BBID for the health and safety needs of Mountain House community, the MEP or fire suppression at Contra Costa Airport.

In my original written testimony, I noted that BBID had not provided enough information to adjust the amount BBID was calculated to have diverted between June 13, 2014 and June 24, 2015 based on BBID's allegations that it had diverted 497 af of water under transfer contracts during June 2015, of which 2 af were for airport fire suppression and 4 af went to the MEP, and supplied 160 af of water to MHCS D between June 13, 2015 and June 30, 2015. (Exhibit WR-15, page 5, section 7 through page 7, section 8; Exhibit WR-95.)

BBID's exhibits do not provide the missing information needed to adjust BBID's ACLC diversion amount. It is my understanding and belief that nothing in BBID's exhibits demonstrates (1) how much of the 497 af of contract water was diverted between June 13, 2015 and June 24, 2015, (2) how much of the 2 af of water designated for airport fire suppression, 4 af of water for the MEP and 160 af of water delivered to MHCS D was diverted between June 13, 2015 and June 24 2015, and (3) how much of the 160 af of water delivered to MHCS D was used for health and safety purposes.

Therefore, I am unable to determine in what amount, if any, my calculation of 1,887 af of water diverted by BBID between June 13, 2015 and June 24, 2015 should be adjusted.

On that basis, I do not recommend any adjustments to the calculated diversion amount of 1,887 af (or 1,829.1 af based on the documents submitted by BBID) as explained in my original written testimony (Exhibit WR-15).