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7 Attorneys for the City and County of San Francisco

8 BEFORE THE CALIFORNIA

9 STATE WATER RESOURCES CONTROL BOARD

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

DECLARATION OF JONATHAN P. KNAPP IN
SUPPORT OF PRE-HEARING BRIEF BY THE
CITY AND COUNTY OF SAN FRANCISCO IN
RESPONSE TO PROSECUTION TEAM'S
PRE-HEARING BRIEF OF LEGAL ISSUES
AND BYRON-BETHANY IRRIGATION
DISTRICT'S MOTION TO DISMISS

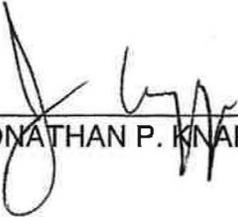
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I, Jonathan P. Knapp, declare:

1. I am an attorney at law licensed to practice before the courts of the State of California. I am a Deputy City Attorney with the San Francisco City Attorney's Office.

2. Attached hereto as Exhibit A is a true and correct copy of excerpts from the Deposition of John O'Hagan, Volume 1, dated November 19, 2015.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. This declaration was executed in San Francisco, California on February 19, 2016.



JONATHAN P. KNAPP

EXHIBIT A

BEFORE THE
CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

IN RE THE MATTERS OF:

SWRCB Enforcement Actions
ENFO1951; ENFO1949

WEST SIDE IRRIGATION
DISTRICT CEASE AND DESIST
ORDER HEARING,

and

BYRON-BETHANY IRRIGATION
DISTRICT ADMINISTRATIVE
CIVIL LIABILITY HEARING.

DEPOSITION OF JOHN O'HAGAN
Volume I

November 19, 2015

Reported By: KATHRYN DAVIS, CSR No. 3808

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APPEARANCES

For the Central Delta Water Agency:

SPALETTA LAW PC
By: JENNIFER SPALETTA
Attorney at Law
P.O. Box 2660
Lodi, California 95421

For the Byron-Bethany Irrigation District:

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By: DANIEL KELLY
LAUREN D. BERNADETT
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500 Capitol Mall, Suite 1000
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For the West Side Irrigation District, Banta-Carbona
Irrigation District and Patterson Irrigation District:

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By: JEANNE M. ZOLEZZI
Attorney at Law
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For the San Joaquin Tributaries Authority:

O'LAUGHLIN & PARIS LLP
By: TIM O'LAUGHLIN
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For the City and County of San Francisco:

CITY AND COUNTY OF SAN FRANCISCO
OFFICE OF THE CITY ATTORNEY
By: JONATHAN P. KNAPP
Deputy City Attorney
1300 Market Street, Suit 418
San Francisco, California 94102

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APPEARANCES CONTINUED

For the San Francisco Public Utilities:

ELLISON, SCHNEIDER & HARRIS
By: ROBERT E. DONLAN
Attorney at Law
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Sacramento, California 95816-5905

For the Division of Water Rights:

SWRCB OFFICE OF ENFORCEMENT
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ANDREW TAURIAINEN, Senior Staff Counsel
Attorneys at Law
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For the California Department of Water Resources:

Department of Water Resources
Office of the Chief Counsel
By: ROBIN MCGINNIS
TRIPP (JAMES) MIZELL
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For the State Water Contractors:

STATE WATER CONTRACTORS
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For the South Delta Water Agency:

HARRIS, PERISHO & RUIZ
By: S. DEAN RUIZ
Attorney at Law
3439 Brookside Road, Suite 210
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APPEARANCES CONTINUED

Also Present:

KENNETH R. HENNEMAN
KENNETH R. HENNEMAN CONSULTING

RICK GILMORE
BYRON-BETHANY IRRIGATION DISTRICT

NICHOLAS BONSIGNORE, P.E.
WAGNER & BONSIGNORE

TULLY & YOUNG
GREG YOUNG, P.E.

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I N D E X O F E X A M I N A T I O N

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1 question that maybe will make this easier.

2 Q Did anyone at the State Water Resources Control
3 Board review and approve the water availability analysis
4 that was performed by Aaron Miller or Brian Coats during
5 2014?

6 MS. MORRIS: Objection. Compound. Vague.

7 MR. CARRIGAN: I'll join.

8 Q BY MS. SPALETTA: You can answer.

9 A The methodology -- it was my decision on the
10 methodology that we use in 2014 that was eventually
11 used for that determination.

12 Q Was it also your decision regarding the
13 methodology for 2015?

14 A Yes.

15 Q So then going back to my original question,
16 which was regarding the supply side of the water
17 availability analysis. What method was used to identify
18 supply in 2014?

19 A I'm trying to recall. That is my problem.
20 For 2015 I know. But I'm not 100 percent sure on
21 2014. If they were the same, which I believe they
22 were -- how is that --

23 Q Let's start with what you do remember. What was
24 the method used to identify supply for 2015?

25 A It was full natural flow from the Department

1 So I'll go ahead and turn the questions over
2 to Mr. Knapp.

3 THE WITNESS: Thank you.

4 EXAMINATION BY MR. KNAPP

5 Q BY MR. KNAPP: I just have a few questions.

6 Mr. O'Hagan, you testified earlier today that it
7 was your decision at the Division of Water Rights to use
8 the water availability analysis developed by Brian Coats
9 and Aaron Miller; is that correct?

10 A What was the last of that?

11 Q Developed by Brian Coats and Aaron Miller.

12 A For 2014.

13 Q And I believe you also testified that it was
14 your decision to use the water supply availability
15 analysis in 2015 as well?

16 A Yes.

17 Q You mentioned that you received some stakeholder
18 input regarding the water availability analysis. Was
19 there any public process for soliciting input from all
20 of the potentially-affected stakeholders?

21 MR. CARRIGAN: I would say vague and ambiguous.

22 THE WITNESS: Not to my recall.

23 Q BY MR. KNAPP: To be more specific, were there
24 any workshops conducted at the State Water Board where
25 formal comments could be received on the water

1 curtailment. It was couched as Term 96, or something
2 like that, based on modeling in lieu of the methodology
3 that we were using with supply and demand.

4 Q Well, in 2015 was there any workshops conducted
5 to solicit input on the methodology that the Division of
6 Water Rights was proposing to use and ultimately used to
7 conduct its water supply availability analysis?

8 A No, because I believe the Board's decision in
9 the previous year, based on that information, was
10 that we were going to stick with the current
11 methodology in lieu of the proposed modeling type of
12 curtailment.

13 Q To be clear. So you are referring to the
14 emergency regulations that were enacted in 2014?

15 A There was a issue discussed, as I recall,
16 about what methodology to do curtailments in 2014 in
17 June, I believe. I can't recall the date. It would
18 be on our website.

19 Q Did the State Water Board rely on the emergency
20 regulations this year to conduct the curtailments?

21 A No. The emergency regulations that were
22 finally adopted just pertained to informational
23 orders. So yes, we are utilizing the Informational
24 Order portion of that reg.

25 Q With respect to the portion of that reg that

1 dealt with curtailment, is that portion still in effect?

2 A No. But you asked was there any public
3 noticing and opportunity for comment, and that was
4 the opportunity in 2014.

5 Q Okay. And the curtailment portion of that
6 regulation, has that since been repealed?

7 A It was not adopted, so we are utilizing the
8 same methodology that we did in 2014.

9 Q Okay. Well, so following up on that question.
10 So the emergency regulation provided -- well, I'll ask
11 you the question.

12 Is it your position that the methodology that
13 the Water Board used in 2015 is supported by the
14 emergency regulation that has now since been repealed
15 that was operative in 2014 dealing with curtailment?

16 MR. CARRIGAN: Calls for a legal conclusion.

17 THE WITNESS: It is not a methodology that has
18 been adopted by the Board, if that is what you are
19 asking.

20 Q BY MR. KNAPP: Okay. To be clear, there is no
21 decision by the Board that adopted the methodology that
22 the Division of Water Rights used in 2014 or 2015 to
23 determine water supply availability?

24 A Correct.

25 Q Is there any statutory authority, that you are

1 aware of, that authorizes the Division of Water Rights
2 to use the methodology that you've used in 2014 and 2015
3 for curtailment?

4 MR. CARRIGAN: Calls for legal conclusion.

5 MR. KNAPP: I'm just asking if he is aware.

6 MR. CARRIGAN: Same objection.

7 THE WITNESS: I'm not aware.

8 Q BY MR. KNAPP: Okay. So I've asked you about
9 public process. Was there any public process in 2015
10 for receiving public input on the methodology that the
11 State Water Board used to determine water supply
12 availability?

13 MR. CARRIGAN: Calls for speculation.

14 THE WITNESS: There is always opportunity for
15 public to comment, and that is what we constantly
16 received.

17 Q BY MR. KNAPP: Just to be clear, though, there
18 were no workshops held, there was no formal opportunity
19 to comment in 2015 on water supply availability
20 analysis; is that correct?

21 MR. CARRIGAN: Calls for speculation.

22 THE WITNESS: I don't recall.

23 Q BY MR. KNAPP: Well, okay. Was there any public
24 process for responding to comments from stakeholders in
25 2015 on the water methodology analysis used by the Board

1 as the basis for curtailment?

2 A I don't recall.

3 Q If there had been a public process, would you
4 have been involved? Given that you've stated that it
5 was your decision to use the methodology, would you have
6 been involved in the workshop if one had been conducted?

7 A Myself or my staff.

8 Q But you don't recall if you attended any
9 workshop?

10 A I do not recall a specific workshop or Board
11 item in which the methodology came up in 2015.

12 Q In developing the methodology for water supply
13 availability, were there any regulatory or statutory
14 requirements that you needed to adhere to?

15 MR. CARRIGAN: Calls for a legal conclusion.

16 THE WITNESS: Not to my knowledge.

17 Q BY MR. KNAPP: So it was your discretion that it
18 was completely unfettered?

19 MR. CARRIGAN: Same objection. Argumentative.

20 THE WITNESS: What does "unfettered" mean?

21 MR. CARRIGAN: Have you finished with your
22 question, counsel?

23 MR. KNAPP: I was just asking if there was
24 bounds, any parameters, for his discretion in developing
25 the water supply availability methodology.

1 MR. CARRIGAN: Calls for a legal conclusion.

2 THE WITNESS: "Unfettered," what do you mean
3 "unfettered"? I don't know what that means.

4 Q BY MR. KNAPP: Was there any constraint imposed
5 under your discretion to decide what to include or what
6 not to include in the water availability analysis that
7 you conducted?

8 MR. CARRIGAN: Calls for a legal conclusion.

9 THE WITNESS: Not to my knowledge. But we were
10 only utilizing supply and demand to make sure that we
11 honored the water right priority system.

12 Q BY MR. KNAPP: You testified that you don't
13 recall whether there was any public process in 2015 for
14 either soliciting input or responding to input, in a
15 formal workshop setting, regarding the State Water
16 Board's water availability analysis and the methodology
17 that you had in mind.

18 Have I restated that correctly?

19 A That is correct. But I believe that
20 stakeholders had an opportunity to comment on the
21 Board's Dry Year Report that was done in January, I
22 believe, of 2015.

23 Q And did the Dry Year Report, did that explain
24 the assumptions that the Division of Water Rights was
25 relying upon as the basis for its methodology for its

1 **PROOF OF SERVICE**

2 I, Patty Slomski, declare as follows:

3 I am employed in the County of Sacramento, State of California. I am over the age of eighteen
4 years and am not a party to the within action. My business address is ELLISON, SCHNEIDER
5 & HARRIS, L.L.P.; 2600 Capitol Avenue, Suite 400; Sacramento, California, 95816. On
6 February 22, 2016, I serviced the following documents described as:

7
8 **PRE-HEARING BRIEF BY THE CITY AND COUNTY OF SAN FRANCISCO IN**
9 **RESPONSE TO PROSECUTION TEAM'S PRE-HEARING BRIEF OF LEGAL ISSUES**
10 **AND BYRON-BETHANY IRRIGATION DISTRICT'S MOTION TO DISMISS**

11 **DECLARATION OF JONATHAN P. KNAPP IN SUPPORT OF PRE-HEARING BRIEF**
12 **BY THE CITY AND COUNTY OF SAN FRANCISCO IN RESPONSE TO**
13 **PROSECUTION TEAM'S PRE-HEARING BRIEF OF LEGAL ISSUES AND BYRON-**
14 **BETHANY IRRIGATION DISTRICT'S MOTION TO DISMISS**

15 on the attached service list.

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25 I declare under penalty of perjury that the foregoing is true and correct and that this declaration
26 was executed on February 22, 2016, at Sacramento, California.

27 

28 _____
Patty Slomski

**SERVICE LIST OF PARTICIPANTS OF
THE BYRON-BETHANY IRRIGATION
DISTRICT ADMINISTRATIVE CIVIL
LIABILITY HEARING
AND THE WEST SIDE IRRIGATION
DISTRICT CEASE AND DESIST ORDER
HEARING**

PARTIES	
THE FOLLOWING MUST BE SERVED WITH WRITTEN TESTIMONY, EXHIBITS AND OTHER DOCUMENTS. (All have AGREED TO ACCEPT electronic service, pursuant to the rules specified in the hearing notice.)	
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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	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@lawfirm.com
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Byron-Bethany Irrigation District ACL Hearing
West Side Irrigation District CDO Hearing

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<p>South Delta Water Agency John Herrick, Esq. 4255 Pacific Ave., Suite 2 Stockton, CA 95207 jherrlaw@aol.com</p> <p>Dean Ruiz, Esq. Harris, Perisho & Ruiz, Attorneys at Law 3439 Brookside Road, Suite 210 Stockton, CA 95219 dean@hprlaw.net</p>	<p>Richard Morat 2821 Berkshire Way Sacramento, CA 95864 rjmorat@gmail.com</p>
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