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6 BEFORE THE STATE WATER RESOURCES CONTROL BOARD

7
8 In the Matter of the Administrative Civil Liability Complaint Against Byron Bethany Irrigation District)
9) RESPONSE TO BYRON-BETHANY IRRIGATION DISTRICT SUBPOENA
10) *DUCES TECUM* DATED FEBRUARY 5, 2016
11)
12 In the Matter of the Draft Cease and Desist Order Against the West Side Irrigation District)
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I. Introduction

This document responds to the Subpoena *duces tecum* (Subpoena) issued by Byron-Bethany Irrigation District (BBID) to Andrew Tauriainen on February 5, 2016. It is my understanding that the Office of the Chief Counsel will respond to the subpoenas issued to the Chief Counsel and to the “custodian of records.” However, due to the separation of functions and ethical wall established for the above-referenced enforcement proceedings and the California Water Curtailment Cases (JCCP 4838), certain State Water Board staff and others are outside the scope of the Office of Chief Counsel’s response. As described below, responses from those persons are included here.¹

II. Objections

The Prosecution Team objects to the Subpoena as the allegations raised in Mr. Vergara’s supporting declaration are vague and unsubstantiated, and the Subpoena appears to be calculated to harass and distract the Prosecution Team during a crucial pre-hearing phase.

¹ There is no “custodian of records” for Prosecution staff, as the separation of functions exists only for the purpose of these proceedings. Prosecution staff maintain their own records and, in some cases, portions of the enforcement files. They have been included in the document request review.

1 The Prosecution Team objects to the Subpoena as not reasonably calculated to
2 lead to the discovery of admissible evidence.

3 The Prosecution Team objects to the Subpoena to the extent it seeks privileged
4 records.

5 **III. Scope of Review**

6 In preparing this response, I reviewed my records and the enforcement files for the
7 above-referenced administrative proceedings. I also posed the following questions and
8 provided the names of the BBID board members and general manager to the following
9 persons, whether or not these persons are or were involved in, or even aware of the
10 above-referenced enforcement proceedings and/or the California Water Curtailment
11 Cases (JCCP 4838): (1) the Prosecution Team; (2) all Office of Enforcement management
12 and staff; (3) the Delta Watermaster and all Office of the Delta Watermaster staff; (4)
13 Assistant Deputy Director for Water Rights John O'Hagan, and all Division of Water
14 Rights staff serving under Mr. O'Hagan; (5) other Division staff previously identified as on
15 the prosecution side of the separation of functions in these proceedings and/or JCCP
16 4838; and (6) counsel within the Attorney General's Office who have assisted the
17 Prosecution Team in the administrative proceedings relating to these matters. I received
18 responses from all relevant staff and counsel, and incorporated those responses below.

19 Questions Posed to Relevant Staff and Counsel:

- 20 1. Are you aware of any documents concerning, referring and/or relating to the State
21 Water Board's authority to conduct criminal background checks on Byron-Bethany
Irrigation District's (BBID) elected Board members and/or General Manager?
- 22 2. Are you aware of any documents reflecting requests made by the State Water Board
23 and/or any of its agents, to any individual and/or entity to conduct a criminal
24 background check on one or more of BBID's elected Board members and/or General
Manager?
- 25 3. Are you aware of any documents concerning, referring and/or relating to a criminal
26 background check performed on one or more of BBID's elected Board members
and/or General Manger?
- 27 4. Are you aware of any documents concerning, referring and/or relating to documents
28 and/or information produced to the State Water Board and/or any of its agents in
response to a criminal background check performed on one or more of BBID's elected
Board members and/or General Manager?

