
State Water Resources Control Board

February 18, 2016

VIA ELECTRONIC MAIL

TO: ENCLOSED REVISED SERVICE LIST OF PARTICIPANTS

SECOND PRE-HEARING CONFERENCE RELATED TO BYRON BETHANY IRRIGATION DISTRICT ADMINISTRATIVE CIVIL LIABILITY COMPLAINT AND THE WEST SIDE IRRIGATION DISTRICT DRAFT CEASE AND DESIST ORDER HEARINGS

This letter addresses the procedural issues that were raised during the State Water Resources Control Board's (State Water Board) February 8, 2016 second pre-hearing conference and several additional procedural issues.

ORDER AND TIMING OF PROCEEDING

We will conduct the hearings in the following order:

Policy Statements: Before the commencement of Phase 1 of the consolidated hearings, we will hear from any speakers who did not submit a Notice of Intent to Appear but wish to make a non-evidentiary policy statement. (See Hearing Notice Attachment, Sec. 9a, Policy Statements.) We will limit policy statements to 5 minutes, or less as is appropriate based on the number of persons wishing to make a policy statement.

Opening Statements: We will allow one written opening statement to be submitted by each party in each proceeding. Each written opening statement shall not exceed 10 pages in length, double-spaced, in 12 point font (preferably Arial). Alternately, parties may file a joint opening statement of up to 20 pages in length. Written rebuttal of written opening statements will not be accepted. The opportunity to respond in writing to opening statements is in a party's closing brief.

After presentation of any policy statements and before we proceed to summaries of direct testimony in Phase 1, we will allow all of the parties to either proceeding to make a single oral opening statement. We will not allow time for additional opening statements prior to Phase 2 of either hearing.

Oral opening statements made by parties presenting a case-in-chief should briefly summarize the parties' objectives in the case, the major points they intend to establish, and the relationship between the major points and the Key Issues. Oral opening statements may include policy-oriented statements and should briefly summarize the party's interest and extent of participation.

We will hear oral opening statements in the following order according to the stated time limits. Parties may choose to combine their allowed time with that of other parties. However, parties will need to inform us of these changes, by **Noon, March 14, 2016**:

1. Division of Water Rights Prosecution Team (Prosecution Team) (20 minutes)
2. Byron Bethany Irrigation District (BBID) (20 minutes)
3. The West Side Irrigation District (WSID) (20 minutes)
4. Mr. Morat (5 minutes)
5. South Delta Water Agency (SDWA) (5 minutes)
6. Central Delta Water Agency (CDWA) (5 minutes)
7. City and County of San Francisco (CCSF) (5 minutes)
8. San Joaquin Tributaries Authority (SJTA) (5 minutes)
9. California Department of Water Resources (DWR) (5 minutes)
10. State Water Contractors (5 minutes)
11. Patterson Irrigation District (5 minutes)
12. Banta-Carbona Irrigation District (5 minutes)
13. Westlands Water District (5 minutes)

Cases-in-Chief – Phase 1 (Water Availability): We will allow the parties to present their oral summaries of direct testimony in the following order, according to the stated time limits. We may, upon an offer of proof as to the substance, purpose, and relevancy of the expected testimony, approve a party's request for additional time to present direct testimony during the party's case-in-chief:

Order of Presentation for Direct Testimony:

1. Prosecution Team (1.5 hours)
2. BBID (1.5 hours)
3. WSID (1.5 hours)
4. SDWA (30 minutes)

Order of Cross-Examination:

Cross-examination is not limited to the scope of direct testimony. Cross-examination must, however, be limited to the factual issues in dispute. The parties may choose to combine their allowed time for cross-examination with that of other parties. However, parties will need to inform us of these changes, by **Noon, March 14, 2016**.

In Phase 1, cross-examination will be conducted in the following order, according to the stated time limits per witness, or in the case of multiple witnesses, per panel of witnesses:

1. Prosecution Team (1 hour)
2. BBID (1 hour)
3. WSID (1 hour)
4. SDWA (10 minutes)
5. CDWA (10 minutes)
6. CCSF (10 minutes)
7. SJTA (10 minutes)
8. DWR (10 minutes)
9. State Water Contractors (10 minutes)
10. Patterson Irrigation District (10 minutes)
11. Banta-Carbona Irrigation District (10 minutes)
12. Westlands Water District (10 minutes)

During the second pre-hearing conference, some of the parties expressed concern that the time allowed for cross-examination is too limited, and that cross-examination of witnesses by panel will lead to confusion. At this time, we intend to proceed within the time limits provided here and allow cross-examination by panel of witnesses if a party has presented its direct testimony in that manner rather than by individual witness. However, the cross-examiners may direct their questions to particular witnesses on the panel.

We note that the parties have already had the opportunity to depose the Prosecution Team's witnesses, so cross-examination during the hearing will not be the parties' first and only opportunity to elicit testimony from these individuals. The parties also have the option of coordinating and combining their allotted time. We conclude that the time limits are appropriate to avoid repetitive testimony and promote efficiency of the hearing procedure. We will consider requests for additional time during the hearing, and will allow additional time if further cross-examination appears likely to produce relevant and material evidence.

Redirect Testimony and Recross-Examination: At our discretion during the hearing, we may allow redirect examination upon an offer of proof as to the substance, purpose, and relevancy of the expected testimony. Recross-examination, if any, shall be limited to the scope of the redirect testimony. We are likely to establish time limits for any redirect and recross-examination.

If allowed, redirect testimony and recross-examination will be conducted in the same order established for direct testimony and cross-examination.

Exhibits offered into Evidence: After completion of direct testimony, cross-examination, and if allowed, redirect testimony and recross-examination, the party presenting its case-in-chief may offer its exhibits into evidence.

Presentation of Rebuttal: After completion of direct testimony and cross-examination, and any allowed redirect testimony and recross-examination, the parties may present rebuttal evidence.

Rebuttal evidence is limited to evidence that is responsive to evidence presented in connection with another party's case-in-chief, and does not include evidence that should have been presented during the case-in-chief of the party submitting rebuttal evidence. Rebuttal evidence may not be repetitive of evidence already submitted. Cross-examination of rebuttal evidence shall be limited to the scope of the rebuttal evidence.

We will allow parties to present a summary of submitted written rebuttal testimony. Parties may also offer rebuttal testimony that is in response to new evidence and could not have been previously submitted in writing. The parties may choose to combine their allowed time for rebuttal with that of other parties. However, parties will need to inform us of these changes, by **Noon, March 14, 2016.**

Rebuttal testimony will be presented in the following order, according to the stated time limits. The Prosecution Team, BBID, and WSID will each be allowed 30 minutes. All other parties will be limited to 10 minutes per party for rebuttal.

1. Prosecution Team (30 minutes)
2. BBID (30 minutes)
3. WSID (30 minutes)
4. SDWA (10 minutes)

5. CDWA (10 minutes)
6. CCSF (10 minutes)
7. SJTA (10 minutes)
8. DWR (10 minutes)
9. State Water Contractors (10 minutes)
10. Patterson Irrigation District (10 minutes)
11. Banta-Carbona Irrigation District (10 minutes)
12. Westlands Water District (10 minutes)

We may allow additional time for rebuttal upon an offer of proof as to the substance, purpose, and relevancy of the expected testimony.

Cross-examination of rebuttal evidence will follow the same order as presentation of rebuttal, and will be limited to the scope of the rebuttal evidence. Time limits for cross-examination of rebuttal testimony will be specified at a later time.

After completion of presentation of rebuttal evidence and rebuttal cross-examination by all the parties, each party may offer any rebuttal exhibits into evidence.

Cases-in-Chief – Phase 2 (BBID ACL Complaint):

We will allow the parties to present their cases-in-chief and conduct cross-examination in the following order, according to the stated time limits. We may, upon an offer of proof as to the substance, purpose, and relevancy of the expected testimony, approve a party's request for additional time to present direct testimony during the party's case-in-chief:

Order of Presentation for Direct Testimony:

1. Prosecution Team (1 hour)
2. BBID (1 hour)
3. SDWA (20 minutes)
4. Richard Morat (10 minutes)

Order of Cross-Examination:

1. Prosecution Team (1 hour)
2. BBID (1 hour)
3. WSID (10 minutes)
4. SDWA (10 minutes)
5. CDWA (10 minutes)
6. CCSF (10 minutes)
7. SJTA (10 minutes)
8. DWR (10 minutes)
9. State Water Contractors (10 minutes)
10. Patterson Irrigation District (10 minutes)
11. Banta-Carbona Irrigation District (10 minutes)

The parties may choose to combine their allowed time for cross-examination with that of other parties. However, parties will need to inform us of these changes, by **Noon, March 14, 2016**.

We may allow additional time for cross-examination, if we determine that the examination is likely to produce relevant and material testimony.

Redirect Testimony and Recross-Examination: At our discretion during the hearing, we may allow redirect examination upon an offer of proof as to the substance, purpose, and relevancy of the expected testimony. Recross-examination, if any, shall be limited to the scope of the redirect testimony. We are likely to establish time limits for any redirect and recross-examination.

If allowed, redirect testimony and recross-examination will be conducted in the same order established for direct testimony and cross-examination.

Exhibits offered into Evidence: After completion of direct testimony, cross-examination, and if allowed, redirect testimony and recross-examination, the party presenting its case-in-chief may offer its exhibits into evidence.

Presentation of Rebuttal: After completion of direct testimony and cross-examination, and any allowed redirect testimony and recross-examination, the parties may present rebuttal evidence.

Rebuttal evidence is limited to evidence that is responsive to evidence presented in connection with another party's case-in-chief, and does not include evidence that should have been presented during the case-in-chief of the party submitting rebuttal evidence. Rebuttal evidence may not be repetitive of evidence already submitted. Cross-examination of rebuttal evidence shall be limited to the scope of the rebuttal evidence.

We will allow parties to present a summary of submitted written rebuttal testimony. Parties may also offer rebuttal testimony that is in response to new evidence and could not have been previously submitted in writing. The parties may choose to combine their allowed time for rebuttal with that of other parties. However, parties will need to inform us of these changes, by **Noon, March 14, 2016.**

The order of presentation of rebuttal evidence will be the same as the order for cross-examination. The Prosecution Team and BBID will each be allowed 30 minutes. All other parties will be limited to 10 minutes per party for rebuttal.

We may allow additional time for rebuttal upon an offer of proof as to the substance, purpose, and relevancy of the expected testimony.

Cross-examination of rebuttal evidence will follow the same order as presentation of rebuttal, and will be limited to the scope of the rebuttal evidence. Time limits for cross-examination of rebuttal testimony will be specified at a later time.

After completion of presentation of rebuttal evidence and rebuttal cross-examination by all the parties, each party may offer any rebuttal exhibits into evidence.

Cases-in-Chief – Phase 2 (WSID Draft CDO):

We will allow the parties to present their cases-in-chief and conduct cross-examination in the following order, according to the stated time limits. We may, upon an offer of proof as to the substance, purpose, and relevancy of the expected testimony, approve a party's request for additional time to present direct testimony during the party's case-in-chief:

Order of Presentation for Direct Testimony:

1. Prosecution Team (1 hour)
2. WSID (1 hour)
3. SDWA (20 minutes)

Order of Cross-Examination:

1. Prosecution Team (1 hour)
2. WSID (1 hour)
3. BBID (10 minutes)
4. SDWA (10 minutes)
5. CDWA (10 minutes)
6. CCSF (10 minutes)
7. SJTA (10 minutes)
8. DWR (10 minutes)
9. State Water Contractors (10 minutes)
10. Westlands Water District (10 minutes)

The parties may choose to combine their allowed time for cross-examination with that of other parties. However, parties will need to inform us of these changes, by **Noon, March 14, 2016**.

We may allow additional time for cross-examination if we determine that the examination is likely to produce relevant and material testimony.

Redirect Testimony and Recross-Examination: At our discretion during the hearing, we may allow redirect examination upon an offer of proof as to the substance, purpose, and relevancy of the expected testimony. Recross-examination, if any, shall be limited to the scope of the redirect testimony. We are likely to establish time limits for any redirect and recross-examination.

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Exhibits offered into Evidence: After completion of direct testimony, cross-examination, and if allowed, redirect testimony and recross-examination, the party presenting its case-in-chief may offer its exhibits into evidence.

Presentation of Rebuttal: After completion of direct testimony and cross-examination, and any allowed redirect testimony and recross-examination, the parties may present rebuttal evidence.

Rebuttal evidence is limited to evidence that is responsive to evidence presented in connection with another party's case-in-chief, and does not include evidence that should have been presented during the case-in-chief of the party submitting rebuttal evidence. Rebuttal evidence may not be repetitive of evidence already submitted. Cross-examination of rebuttal evidence shall be limited to the scope of the rebuttal evidence.

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Cross-examination of rebuttal evidence will follow the same order as presentation of rebuttal, and will be limited to the scope of the rebuttal evidence. Time limits for cross-examination of rebuttal testimony will be specified at a later time.

After completion of presentation of rebuttal evidence and rebuttal cross-examination by all the parties, each party may offer any rebuttal exhibits into evidence.

CLOSING BRIEF

Oral closing arguments will not be permitted. We will allow the parties to submit one closing brief in each proceeding, after completion of both phases of the hearings.

Additional procedural details about the closing briefs, including page limits and deadlines for submittal, will be determined at a later time during the proceedings. Closing briefs should only address those facts and legal arguments previously raised. At this time, we will not allow responses to closing briefs.

OTHER PROCEDURAL MATTERS:

Briefs in response to the motions submitted by BBID and WSID on January 25, 2016, and as revised and resubmitted on February 3, 2016, are due on February 22, 2016. The Prosecution Team may submit one brief in each proceeding in response to the respective motions, each up to 20 pages in length. The remaining parties may submit one responsive brief in each proceeding in support or in opposition to the motion(s). Each of these responsive briefs may not exceed 10 pages in length. Alternately, parties may file a joint brief of up to 20 pages in length.

During the pre-hearing conference, some parties expressed concern that the ten-page limit on responsive briefs in support or opposition is insufficient to address the legal arguments that have been raised. We conclude that the page limits are sufficient in light of the similar limits imposed on the moving parties, and because parties may file a joint brief up to 20 pages in length.

We are considering the parties' request that the hearing officers respond to any motions in limine at least one week in advance of the hearing, and allow for oral argument if appropriate. Although we are unlikely to hold an additional pre-hearing conference, we appreciate that rulings on these motions in advance of the hearing will assist the parties in planning their presentation of evidence. The parties should, however, be prepared to present their evidence even if we do not have the opportunity to address all of those motions in advance of the hearing.

We will not allow the parties to submit a motion for judgment as a matter of law during the hearing. Any such motion may be made in writing either in the party's written opening statement or after the close of the hearing in the party's closing brief.

WSID Revised Notice of Intent to Appear

On January 19, 2016, WSID submitted an amended Notice of Intent to Appear that added Ms. Karna Harrigfeld and Mr. Greg Young as witnesses. The Prosecution Team objected to these revisions to WSID's witness list. In our ruling of [February 1, 2016](#), we allowed the revision to include Mr. Young, who had previously been identified by BBID as a witness in the BBID ACL Complaint hearing. We sustained the Prosecution Team's objection with respect to Ms. Harrigfeld, and excluded her testimony from the record.

On February 3, 2016, WSID again revised their witness list to include Mr. Jack Alvarez. We find that the same reasoning applicable to our exclusion of the testimony of Ms. Harrigfeld is applicable to Mr. Alvarez. In our prior ruling, we permitted WSID to submit the testimony of an alternate witness solely for the purpose of authenticating the referenced exhibits. Because the Prosecution Team is willing to stipulate to exhibits WSID 0001 through 0026, and absent the objection of any other party, testimony for this purpose is now unnecessary. Therefore, we will not include any of Mr. Alvarez's testimony in the record at this time.

Ex Parte Communications

We would like to take this opportunity to remind the parties that ex parte communications concerning substantive or controversial procedural issues relevant to this hearing are prohibited. Please be sure to copy the service list on any correspondence to us, the other Board Members, or the hearing team.

Thank you for your continued cooperation. Questions regarding non-controversial procedural matters should be directed to Staff Counsel Nicole Kuenzi at (916) 322-4142 or by email to Nicole.Kuenzi@waterboards.ca.gov; or Ernie Mona at (916) 341-5359 or by email to Ernie.Mona@waterboards.ca.gov or to Jane Farwell-Jensen at (916) 341-5349 or by email to Jane.Farwell-Jensen@waterboards.ca.gov (Gov. Code, § 11430.20, subd. (b).)

Sincerely,



Frances Spivy-Weber, Vice-Chair
WSID Hearing Officer



Tam M. Doduc, Board Member
BBID Hearing Officer

Enclosures: Revised Service Lists

**SERVICE LIST OF PARTICIPANTS
THE WEST SIDE IRRIGATION DISTRICT
CEASE AND DESIST ORDER HEARING
(October 8, 2015, Revised 12/18/15)**

Parties THE FOLLOWING <u>MUST BE SERVED</u> WITH WRITTEN TESTIMONY, EXHIBITS AND OTHER DOCUMENTS. (All have AGREED TO ACCEPT electronic service, pursuant to the rules specified in the hearing notice.)	
<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 Moskowitz Tiedemann & Girard 400 Capitol Mall, 27th Floor Sacramento, CA 95814 dohanlon@kmtg.com rakroyd@kmtg.com</p> <p>Philip Williams of Westlands Water District pwilliams@westlandswater.org</p>
<p>SOUTH DELTA WATER AGENCY John Herrick, Esq. Dean Ruiz 4255 Pacific Ave., Suite 2 Stockton, CA 95207 jherrlaw@aol.com dean@hpirlaw.net</p>	<p>CENTRAL DELTA WATER AGENCY Jennifer Spaletta Spaletta Law PC PO Box 2660 Lodi, CA 95241 jennifer@spalettalaw.com</p> <p>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 vkinaid@olaughlinparis.com towater@olaughlinparis.com</p> <p style="text-align: right;">(revised 12/18/15)</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>
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**SERVICE LIST OF PARTICIPANTS
BYRON-BETHANY IRRIGATION DISTRICT
ADMINISTRATIVE CIVIL LIABILITY HEARING**

(09/02/15; Revised: 09/10/15; Revised 10/06/15; Revised 10/22/15, 12/18/15)

PARTIES	
<p>THE FOLLOWING <u>MUST BE SERVED</u> WITH WRITTEN TESTIMONY, EXHIBITS AND OTHER DOCUMENTS. (All have AGREED TO ACCEPT electronic service, pursuant to the rules specified in the hearing notice.)</p>	
<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\Suntag 5757 Pacific Ave., 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</p> <p>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</p>	<p>California Department of Water Resources Robin McGinnis, Attorney PO Box 942836 Sacramento, CA 94236-0001 robin.mcginnis@water.ca.gov</p>

<p>Dante Nomellini and Dante Nomellini, Jr. Nomellini, Grilli & McDaniel ngmplcs@pacbell.net dantejr@pacbell.net</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 vkinaid@olaughlinparis.com towater@olaughlinparis.com lwood@olaughlinparis.com</p> <p>(revised 12/18/15)</p>
<p>South Delta Water Agency John Herrick, Esq. 4255 Pacific Ave., Suite 2 Stockton, CA 95207 jherriaw@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>State Water Contractors Stefani Morris, Attorney 1121 L Street, Suite 1050 Sacramento, CA 95814 smorris@swc.org</p>