

State Water Resources Control Board

October 23, 2015

VIA ELECTRONIC MAIL

TO: ENCLOSED SERVICE LIST OF PARTICIPANTS

RULING ON MOTION FOR PROTECTIVE ORDER IN THE MATTER OF THE DRAFT CEASE AND DESIST ORDER ISSUED AGAINST THE WEST SIDE IRRIGATION DISTRICT

This letter addresses procedural issues raised by the Division of Water Rights Prosecution Team's Motion for Protective Order and several additional procedural issues discussed during the pre-hearing conference held on October 19, 2015.

MOTION FOR PROTECTIVE ORDER

The Prosecution Team filed a motion for protective order on October 15, 2015, requesting that the parties: (1) be required to coordinate discovery requests; (2) be prohibited from deposing the Prosecution Team's witnesses prior to the evidence and witness statement submittal deadline; and (3) be prohibited from seeking witness statements prior to the evidence and witness statement submittal deadline. The Prosecution Team supplemented its motion by letter dated October 21, 2015, additionally requesting that (4) deposition subpoenas and document requests not require the disclosure of documents not already produced prior to the deposition, and (5) parties be prohibited from seeking witness statements *and* exhibits before the witness statement submittal deadline. For the reasons set forth below, the Prosecution Team's requests are granted in part and denied in part.

1. Request for coordination of discovery requests.

The Prosecution Team requests a protective order requiring all parties to coordinate discovery amongst the various parties in this matter and to coordinate this discovery with any discovery in the matter of the Administrative Civil Liability Complaint issued against Byron-Bethany Irrigation District. I understand that such coordination is already occurring and a formal ruling may be unnecessary. I encourage the parties to continue this coordination to facilitate the efficient conduct of this proceeding. Please be aware that I am very unlikely to allow multiple depositions of the same individual. I am also likely to limit or prohibit discovery requests in this matter that are duplicative of and not coordinated with requests made or depositions noticed in the Byron-Bethany Irrigation District proceeding.

2. Request to prohibit depositions prior to the evidence and witness statement submittal deadline.

The Prosecutions Team's request for a general protective order to prohibit the conduct of depositions prior to the evidence and witness statement submittal deadline is **denied**. The Prosecution Team cites substantial authority for the hearing officer's ability to disallow discovery

when depositions or document production would duplicate information otherwise produced through the State Water Board's hearing procedures. But the Prosecution Team did not request that depositions or other discovery be prohibited. Rather, the Prosecution Team requests only that depositions be postponed until after the deadline for submission of evidence and witness statements.

Given that there has been no objection to the use of depositions as a method of discovery, there is insufficient basis to impose a general protective order that would delay all depositions without consideration of the particular circumstances. The interest in allowing the parties to discover information in time to tailor their cases-in-chief and streamline the hearing process, and the interest in allowing additional time to schedule depositions around the impending holidays, may outweigh the burden and inefficiency of duplicating deposition testimony in the later submitted written statements. This ruling does not prevent the Prosecution Team or any other party from seeking a protective order to prohibit or postpone the deposition of a particular individual based on undue burden, the unreasonably duplicative or cumulative nature of the request, or the ability of the noticing party to obtain the information from a more convenient, less burdensome, or less expensive source in the specific instance.

3. Request to protect witness statements and exhibits from disclosure prior to the evidence and witness statement submittal deadline.

The Prosecution Team's motion for a protective order prohibiting requests for the production of witness statements prior to the evidence and witness statement submittal deadline appears to be premature. Based on the Prosecution Team's motion and the parties' responses to that motion, there is only a hypothetical threat that the parties will seek disclosure of witness statements and exhibits prior to the submittal deadline. There are a number of privileges that may apply to protect these documents from disclosure, and thus far, it does not appear that the parties are actually attempting to circumvent the procedural deadlines by obtaining these documents in advance. If a dispute arises with respect to particular documents, the parties may file an appropriate motion.

4. Request to protect from disclosure documents not already produced prior to a noticed deposition.

The Prosecution Team requests that they not be required to produce documents that have not already been produced prior to the noticed deposition. This request is **granted, in part**. The West Side Irrigation District and the Byron-Bethany Irrigation District have requested documents from the State Water Resources Control Board pursuant to the California Public Records Act, Government Code section 6250 *et seq.* To the extent that the Prosecution Team is already under an obligation to produce these documents within a reasonable period of time, I will not require the Prosecution Team to produce the same documents at a more accelerated schedule. To the extent that a request includes documents outside of the scope of the pending requests under the Public Records Act, I will consider whether a response to those requests prior to the noticed depositions imposes an undue burden on a case-by-case basis.

ADDITIONAL PROCEDURAL ISSUES

Hearing Postponement: The Public Hearing scheduled to commence on Thursday, November 12, 2015 and continuing, if necessary, November 13 and 16, 2015 is **POSTPONED** until January 11, 2016, and continuing January 12 through 15, 2016. Accordingly, the submittal deadline for exhibits and testimony issued pursuant to the hearing notice is also **POSTPONED**.

I am still considering the request of the parties to postpone the hearing further and to coordinate the procedural deadlines in this matter with those in the Byron-Bethany Irrigation District matter. Based on the availability provided by the parties, further postponement of this proceeding appears to be unlikely, however. During the first week of November 2015, I intend to confirm, via a procedural ruling letter, hearing dates and related submittal deadlines. Until notified otherwise, you should presume that the hearing will commence on January 11, 2016, and that the deadline for submittal of exhibits and testimony will be set for mid to late November 2015.

Discovery Requests: To facilitate prompt response to discovery disputes that may arise, I am requesting that the parties electronically copy all subpoenas and discovery requests to the hearing team at: <mailto:wrhearing@waterboards.ca.gov>. The parties are also asked to attach copies of the particular discovery requests sought to be limited when filing a motion for protective order (including a motion for a general protective order) or motion to quash. As required by section 2016.040 of the California Code of Civil Procedure, the parties should meet and confer regarding any disputes before filing a motion. I intend to respond to motions regarding discovery as promptly as possible; parties who seek to respond to a motion should do so within five working days of service of the underlying motion.

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 to Ernie Mona at (916) 341-5359 or by email to Ernie.Mona@waterboards.ca.gov. (Gov. Code, § 11430.20, subd. (b).)

Sincerely,



for

Frances Spivy-Weber, Vice-Chair
Hearing Officer

Enclosures: Service List

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

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@hprlaw.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 Valeri Kincaid O'Laughlin & Paris LLP 2617 K Street, Suite 100 Sacramento, CA 95814 vkinaid@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>
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