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## State Water Resources Control Board

October 8, 2015

### VIA ELECTRONIC MAIL

TO: ENCLOSED SERVICE LIST OF PARTICIPANTS

### **SERVICE LIST OF PARTICIPANTS TO EXCHANGE INFORMATION: West Side Irrigation District – Hearing to Consider Draft Cease and Desist Order**

In accordance with the State Water Resources Control Board's (State Water Board or Board) September 1, 2015 - [Notice of Public Hearing and Pre-Hearing Conference](#) (Notice), regarding the above subject hearing, a Service List of Participants who have submitted a Notice of Intent to Appear (NOI) and who have indicated intent to participate in the above-referenced hearing is enclosed.

In addition to the parties specified in the State Water Board's Notice, the following participants who submitted NOIs are granted party status:

South Delta Water Agency (SDWA),  
San Joaquin Tributaries Authority,  
California Department of Water Resources,  
Central Delta Water Agency (CDWA),  
State Water Contractors,  
Westlands Water District,  
City and County of San Francisco, and  
Byron Bethany Irrigation District

The NOIs and other documents related to this hearing are posted on the Division of Water Rights project dedicated website:

[http://www.waterboards.ca.gov/waterrights/water\\_issues/programs/hearings/westside\\_irrigation\\_district/cease\\_and\\_desist\\_hearing.shtml](http://www.waterboards.ca.gov/waterrights/water_issues/programs/hearings/westside_irrigation_district/cease_and_desist_hearing.shtml)

### **Requests Regarding Postponement of Hearing**

West Side Irrigation District (WSID), CDWA, and SDWA have requested that the hearing be postponed until at least spring 2016. I will consider postponement of the hearing, but only if rescheduled to proceed in a timely manner.

The State Water Board is the state agency charged with the orderly and efficient administration of water rights, and is directed by the Water Code to take vigorous action to prevent the unlawful diversion of water. The Prosecution Team alleges that WSID violated or threatens to violate the prohibition against the unauthorized diversion of water, and that WSID indicated that it may resume the allegedly unauthorized diversions at any time. Given the severity of the

current drought and the possibility of recurrence of the allegedly unauthorized diversions, the prompt consideration of the proposed cease and desist order is of significant interest to the Board.

The parties must identify and submit to me by **noon, Monday, October 12, 2015**, any conflicts that would prevent their participation in the hearing during the week of January 11 through January 15, 2016. I will not grant the request for postponement unless alternate, timely dates for the hearing are selected. In the meantime, the hearing and associated deadlines remain as indicated in the Notice, and the parties should prepare to proceed with the hearing as scheduled.

### **Pre-Hearing Conference**

As previously noticed, I will conduct a pre-hearing conference to discuss procedural issues related to the hearing on **Monday, October 19, 2015 at 9:00 a.m.** The goal of the pre-hearing conference is to ensure that the hearing proceeds in an orderly and expeditious manner. The pre-hearing conference will not be used to hear arguments on, or determine the merits of, any hearing issues, other than procedural matters, unless the parties agree to resolve a hearing issue by stipulation. Following the pre-hearing conference, I may modify the hearing procedures or issues set forth in the Notice in whole or in part. All parties to the hearing must attend the pre-hearing conference. Failure to attend the pre-hearing conference may result in exclusion from participation in the hearing.

During the pre-hearing conference, I expect the participants to be prepared to discuss the following topics related to the conduct of the hearing: availability of the parties; stipulations as to matters not in dispute; time limits for presentations and cross-examination during the hearing; order of presentation of evidence and cross-examination; submission of written rebuttal testimony; and re-direct and re-cross examination.

### **Stipulations as to Matters not in Dispute**

To facilitate the efficient conduct of the hearing, the Prosecution Team and WSID should meet and confer as soon as practicable in advance of the hearing regarding the stipulation of material facts not in dispute.

### **Time Limits**

At this time, I intend to impose the following time limits during the hearing. I may decide to alter these time limits at a future date.

- **Opening or Policy Statements**: The purpose of an opening statement is to provide an overview of a party's case-in-chief, and describe what the evidence that will be introduced during the case-in-chief is intended to establish. I will only allow opening statements to be presented by the parties presenting a case-in-chief. (Please note that opening statements may be submitted in writing.) Opening statements will be limited to twenty (20) minutes. I will permit those participants participating by rebuttal or cross-examination to make a 5-minute policy statement.
- **Direct testimony**: Oral summaries by the witnesses of direct testimony submitted by parties presenting a case-in-chief will be limited to twenty (20) minutes per witness and up to one (1) hour total to present all of the party's direct testimony.

- **Cross-Examination**: Cross-examination will be limited to one (1) hour each for WSID and the Prosecution Team, and 10 minutes each for all other parties to cross-examine each of the other parties' witnesses or panel of witnesses.

The parties may choose to combine their allowed time for opening statements, presentation of cases-in-chief, or cross-examination with that of other parties.

### **Tentative Order of Presentation**

The tentative order of presentation at the hearing will be:

1. Prosecution Team
2. West Side Irrigation District
3. California Department of Water Resources
4. South Delta Water Agency
5. San Joaquin Tributaries Authority

### **Tentative Order of Cross-Examination**

The tentative order of cross-examination of witnesses at the hearing will be:

1. Prosecution Team
2. West Side Irrigation District
3. South Delta Water Agency
4. Central Delta Water Agency
5. Byron-Bethany Irrigation District
6. Westlands Water Company
7. San Joaquin Tributaries Authority
8. City and County of San Francisco
9. State Water Contractors
10. California Department of Water Resources

### **Rebuttal Testimony**

I may require parties to submit written rebuttal testimony in advance of the hearing. Parties may only present rebuttal evidence during the hearing, which could not have reasonably been submitted in advance of the hearing, after all parties have presented their cases-in-chief and their witnesses have been cross-examined. Rebuttal evidence is limited to evidence that is responsive to evidence presented in connection with another party's case-in-chief, and it does not include evidence that should have been presented during the case-in-chief of the party submitting rebuttal evidence. It also does not include repetitive evidence.

### **Redirect and Recross Examination**

I may allow redirect examination upon an offer of proof as to the substance, purpose, and relevancy of the expected testimony. Any re-direct examination and re-cross examination I allow will be limited to the scope of the cross-examination and the redirect examination, respectively.

**Closing Briefs**

I plan to allow the submission of closing briefs. I will set the deadline and page limits for closing briefs at the end of the hearing.

**Subpoenas**

If you intend to issue any subpoenas for this proceeding, [please use this Subpoena Form](#), which is used in administrative proceedings before the State Water Board. You must provide copies to the parties on the service list and file copies with the State Water Board together with the proof of service.

[http://www.waterboards.ca.gov/waterrights/water\\_issues/programs/hearings/svric/docs/subpoena\\_form.pdf](http://www.waterboards.ca.gov/waterrights/water_issues/programs/hearings/svric/docs/subpoena_form.pdf)

**Ex Parte Communications**

I would like 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 me, the other Board Members, and the hearing team related to this matter.

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](mailto:Nicole.Kuenzi@waterboards.ca.gov); or to Ernie Mona at (916) 341-5359 or by email to [Ernie.Mona@waterboards.ca.gov](mailto:Ernie.Mona@waterboards.ca.gov). (Gov. Code, § 11430.20, subd. (b).)

Sincerely,

  
for

Frances Spivy-Weber, Vice-Chair  
Hearing Officer

Enclosures: Service List  
Notices of Intent to Appear

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

Parties	
THE FOLLOWING <b><u>MUST BE SERVED</u></b> WITH WRITTEN TESTIMONY, EXHIBITS AND OTHER DOCUMENTS. (All have AGREED TO ACCEPT electronic service, pursuant to the rules specified in the hearing notice.)	
<p><b>DIVISION OF WATER RIGHTS</b>                      Prosecution Team                      Andrew Tauriainen, Attorney III                      SWRCB Office of Enforcement                      1001 I Street,                      16th Floor                      Sacramento, CA 95814  <a href="mailto:Andrew.Tauriainen@waterboards.ca.gov">Andrew.Tauriainen@waterboards.ca.gov</a></p>	<p><b>WEST SIDE IRRIGATION DISTRICT</b>                      Jeanne M. Zolezzi                      Karna Harrigfeld                      Janelle Krattiger                      Herum\Crabtree\Suntag                      5757 Pacific Ave., Suite 222                      Stockton, CA 95207  <a href="mailto:jzolezzi@herumcrabtree.com">jzolezzi@herumcrabtree.com</a>  <a href="mailto:kharrigfeld@herumcrabtree.com">kharrigfeld@herumcrabtree.com</a>  <a href="mailto:jkrattiger@herumcrabtree.com">jkrattiger@herumcrabtree.com</a></p>
<p><b>STATE WATER CONTRACTORS</b>                      Stephanie Morris                      1121 L Street, Suite 1050                      Sacramento, CA 95814  <a href="mailto:smorris@swc.org">smorris@swc.org</a></p>	<p><b>WESTLANDS WATER DISTRICT</b>                      Daniel O'Hanlon                      Rebecca Akroyd                      Kronick Moskowitz Tiedemann &amp; Girard                      400 Capitol Mall, 27th Floor                      Sacramento, CA 95814  <a href="mailto:dohanlon@kmtg.com">dohanlon@kmtg.com</a>  <a href="mailto:rakroyd@kmtg.com">rakroyd@kmtg.com</a></p> <p>Philip Williams of Westlands Water District  <a href="mailto:pwilliams@westlandswater.org">pwilliams@westlandswater.org</a></p>
<p><b>SOUTH DELTA WATER AGENCY</b>                      John Herrick, Esq.                      Dean Ruiz                      4255 Pacific Ave., Suite 2                      Stockton, CA 95207  <a href="mailto:jherrlaw@aol.com">jherrlaw@aol.com</a>  <a href="mailto:dean@hprlaw.net">dean@hprlaw.net</a></p>	<p><b>CENTRAL DELTA WATER AGENCY</b>                      Jennifer Spaletta                      Spaletta Law PC                      PO Box 2660                      Lodi, CA 95241  <a href="mailto:jennifer@spalettalaw.com">jennifer@spalettalaw.com</a></p> <p>Dante Nomellini and Dante Nomellini, Jr.                      Nomellini, Grilli &amp; McDaniel  <a href="mailto:ngmplcs@pacbell.net">ngmplcs@pacbell.net</a>  <a href="mailto:dantejr@pacbell.net">dantejr@pacbell.net</a></p>
<p><b>CITY AND COUNTY OF SAN FRANCISCO</b>                      Johnathan Knapp                      Office of the City Attorney                      1390 Market Street, Suite 418                      San Francisco, CA 94102  <a href="mailto:jonathan.knapp@sfgov.org">jonathan.knapp@sfgov.org</a></p>	<p><b>SAN JOAQUIN TRIBUTARIES AUTHORITY</b>                      Valeri Kincaid                      O'Laughlin &amp; Paris LLP                      2617 K Street, Suite 100                      Sacramento, CA 95814  <a href="mailto:vkinaid@olaughlinparis.com">vkinaid@olaughlinparis.com</a></p>

<p><b>CALIFORNIA DEPARTMENT OF WATER RESOURCES</b> Robin McGinnis, Attorney PO Box 942836 Sacramento, CA 94236-0001 <a href="mailto:robin.mcginnis@water.ca.gov">robin.mcginnis@water.ca.gov</a></p>	<p><b>BYRON BETHANY IRRIGATION DISTRICT</b> Daniel Kelly Somach Simmons &amp; Dunn 500 Capitol Mall, Suite 1000, Sacramento, CA 95814 <a href="mailto:dkelly@somachlaw.com">dkelly@somachlaw.com</a></p>
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## NOTICE OF INTENT TO APPEAR

**Division of Water Rights Prosecution Team** plans to participate in the water right hearing regarding

Draft Cease and Desist Order  
against  
West Side Irrigation District

scheduled to commence  
**Thursday, November 12, 2015 and continue, if necessary,  
on November 13 and 16, 2015  
at 9:00 a.m.**

**1) Check only one (1) of the following:**

I/we intend to present a policy statement only.

I/we intend to participate by cross-examination or rebuttal only.

I/we plan to call the following witnesses to testify at the hearing:

NAME	SUBJECT OF PROPOSED TESTIMONY	ESTIMATED LENGTH OF DIRECT TESTIMONY	EXPERT WITNESS (YES/NO)
Victor Vasquez, Sr. WRCE (Sup.)	WSID Diversions; Key Issues 1 and 2	5	Yes
Kathy Bare, WRCE	WSID Diversions; Key Issues 1 and 2	10	Yes
Michael George, Delta Watermaster	WSID Diversions; Key Issues 1 and 2	5	Yes
John Collins, Env. Scientist (Spec.)	WSID Diversions; Key Issues 1 and 2	10	Yes
Brian Coats, Sr.WRCE (Sup.)	Water availability determination; Key Issues 1 and 2	10	Yes
Jeff Yeazell, WRCE	Water availability determination; Key Issues 1 and 2	10	Yes
Kathy Mrowka, Manager, Enforcement Section	Key Issues 1 and 2	5	Yes
Stephen Nemeth, Department of Water Resources	Department of Water Resources stream flow data and full natural flow calculations used in water availability determinations; CDEC.	5	Yes

Rebuttal Witnesses TBD	The Prosecution Team will call rebuttal witnesses as necessary.		
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(If more space is required, please add additional pages or use reverse side.)

**2) Fill in the following information of the Participant, Party, Attorney, or Other Representative:**

Name (Print): Andrew Tauriainen, Attorney III

Mailing Address: SWRCB Office of Enforcement  
1001 I Street, 16<sup>th</sup> Floor  
Sacramento, CA 95814

Phone Number: (916) 341-5445

Fax Number: (916) 341-5896

E-mail: [Andrew.Tauriainen@waterboards.ca.gov](mailto:Andrew.Tauriainen@waterboards.ca.gov)

Optional:

I/we decline electronic service of hearing-related materials. **[PT accepts electronic service]**

Signature:  Dated: October 2, 2015



**Jeanne M. Zolezzi**  
jzolezzi@herumcrabtree.com

October 2, 2015

VIA ELECTRONIC MAIL

Division of Water Rights  
State Water Resources Control Board  
Attention: Ernest Mona  
Post Office Box 2000  
Sacramento, CA 95812-2000  
[wrhearing@waterboards.ca.gov](mailto:wrhearing@waterboards.ca.gov)

Re: The West Side Irrigation District CDO Hearing Notice of Intent to Appear

As mandated by the State Water Resources Control Board's ("**State Water Board**") September 1, 2015 Notice of Public Hearing and Pre-Hearing Conference for the Cease and Desist Order against West Side Irrigation District [sp] ("**WSID Hearing**"), attached is a Notice of Intent to Appear on behalf of The West Side Irrigation District ("**WSID**")<sup>1</sup>.

The timeline proposed by the State Water Board in the Hearing Notice will not allow WSID to properly prepare for and present its case, thereby creating significant due process issues. Thirty days to identify witnesses to testify at a hearing that could deprive WSID of its property rights is not sufficient. Similarly, sixty days in which to completely develop testimony and exhibits is insufficient. WSID requires additional time to identify witnesses to testify at the hearing currently scheduled to commence on November 12, 2015.

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<sup>1</sup> WSID submits its Notice of Intent to Appear without waiving its objections to the State Water Board's improper assertion of jurisdiction over the subject matter of the WSID Hearing. The Draft CDO against WSID was issued on July 16, 2015. Prior to the issuance of the Draft CDO, WSID filed an action in Sacramento County Superior Court challenging the State Water Board's unlawful curtailment of WSID's water right and otherwise unlawful conduct, including the State Water Board's unlawful issuance of the June 12, 2015 Notice of Unavailability of Water And Need For Immediate Curtailment (Curtailment Notice), and its illegal determination of the unavailability of water. WSID's action challenging the State Water Board's unlawful conduct is currently pending before the Santa Clara Superior Court. Because WSID's action was filed prior to the State Water Board's issuing the Draft CDO, the Santa Clara Superior Court has jurisdiction over the matter. As such, the State Water Board's attempt to undermine the Court's jurisdiction over the subject matter of the pending litigation is unlawful and otherwise inappropriate. While the Santa Clara Superior Court denied WSID's application for stay to prevent the State Water Board from unlawfully impeding on the Court's exercise of jurisdiction over the subject matter of the pending litigation, WSID will appeal the court's failure to act and reserves its rights.

There are numerous factual issues to be explored at the hearing, including (1) the foundation of whether or not water was, in fact, available for diversion by WSID, (2) the legal requirements for diverting treated waste water, and (3) the legal requirements for and the factual circumstances surrounding WSID's diversion of irrigation return flow. WSID will be required to undertake a hydrologic analysis, analyze the data and modeling relied upon by the State Water Board in issuing the Curtailment Notice, and conduct discovery in preparation for the Public Hearing. WSID cannot be expected to engage consultants and have expert witnesses prepared to testify within the short time frames provided for in the Hearing Notice.

WSID respectfully requests that the WSID Hearing be rescheduled to take place after the rescheduled public hearing regarding the Byron-Bethany Irrigation District. While the enclosed Notice of Intent to Appear will allow the State Water Board to determine the parties to be involved in the WSID Hearing, we believe the witness lists should be preliminary, and parties should be allowed to amend the witness lists prior to the hearing after discovery has been completed.

Very truly yours,



JEANNE M. ZOLEZZI  
Attorney-at-Law

cc: Ms. Frances Spivey-Weber  
Andrew Tauriainen, Esq.  
The West Side Irrigation District

**NOTICE OF INTENT TO APPEAR**

The West Side Irrigation District plans to participate in the water right hearing regarding  
(name of party or participant)

Draft Cease and Desist Order  
Against  
West Side Irrigation District

The Public Hearing will commence on  
Thursday, November 12, 2015 and continue, if necessary,  
on November 13 and 16, 2015  
at 9:00 a.m.

**1) Check only one (1) of the following:**

- I/we intend to present a policy statement only.
- I/we intend to participate by cross-examination or rebuttal only.
- I/we plan to call the following witnesses to testify at the hearing. (Fill in the Following Table)

NAME	SUBJECT OF PROPOSED TESTIMONY	ESTIMATED LENGTH OF DIRECT TESTIMONY	EXPERT WITNESS (YES/NO)
	(SEE ATTACHED)		

(If more space is required, please add additional pages or use reverse side.)

**2) Fill in the following information of the Participant, Party, Attorney, or Other Representative:**

Name (Print): Jeanne Zolezzi, Karna Harrigfeld & Janelle Krattiger

Mailing  
Address: 5757 Pacific Ave., Suite 222  
Stockton, CA 95207

Phone Number: (209) 472-7700 Fax Number: (209) 472-7986

E-mail: jzolezzi@herumcrabtree.com; kharrigfeld@herumcrabtree.com;  
jkrattiger@herumcrabtree.com

Optional:

- I/we decline electronic service of hearing-related materials.

Signature:  Date: 10/2/15

Attachment to  
NOTICE OF INTENT TO APPEAR

Draft Cease and Desist Order  
Against  
The West Side Irrigation District

<b>NAME</b>	<b>SUBJECT OF PROPOSED TESTIMONY</b>	<b>ESTIMATED LENGTH OF DIRECT TESTIMONY</b>	<b>EXPERT WITNESS (YES/NO)</b>
David Kaiser	WSID Water Use	20 min	NO
Tom Burke, P.E.	Water Availability/Flow Downstream	30 min	YES
Nick Bonsignore, P.E.	Water Availability	30 min	YES
Kathy Mrowka	Water Availability	20 min	NO
Brian Coats	Water Availability	20 min	NO
Jeff Yeazel	Water Availability	10 min	NO
John O'Hagan	Water Availability	15 min	NO
Stephen NemethDWR	Full Natural Flow	15 min	NO
Michael George	Water Availability	10 min	NO
Tom Howard	Water Availability	10 min	NO

WSID reserves the right to amend or supplement this draft witness list any time prior to the hearing based upon relevant information discovered or developed subsequent to the submittal of this draft witness list.

**NOTICE OF INTENT TO APPEAR**

State Water Contractors plans to participate in the water right hearing regarding  
(name of party or participant)

Draft Cease and Desist Order  
Against  
West Side Irrigation District

The Public Hearing will commence on  
Thursday, November 12, 2015 and continue, if necessary,  
on November 13 and 16, 2015  
at 9:00 a.m.

**1) Check only one (1) of the following:**

- I/we intend to present a policy statement only.
- I/we intend to participate by cross-examination or rebuttal only.
- I/we plan to call the following witnesses to testify at the hearing. (Fill in the Following Table)

NAME	SUBJECT OF PROPOSED TESTIMONY	ESTIMATED LENGTH OF DIRECT TESTIMONY	EXPERT WITNESS (YES/NO)

(If more space is required, please add additional pages or use reverse side.)

**2) Fill in the following information of the Participant, Party, Attorney, or Other Representative:**

Name (Print): Stefanie Morris

Mailing Address: 1121 L Street, Suite 1050, Sacramento, CA 95814

Phone Number: 530) 386-8145 Fax Number: ( )

E-mail: smorris@swc.org

Optional:

- I/we decline electronic service of hearing-related materials.

Signature:  Date: 9/24/15



**NOTICE OF INTENT TO APPEAR**

South Delta Water Agency plans to participate in the water right hearing regarding

**Draft Cease and Desist Order  
Against  
West Side Irrigation District**

The Public Hearing will commence on  
Thursday, November 12, 2015 and continue, if necessary,  
on November 13 and 16, 2015  
at 9:00 a.m.

**1) Check only one (1) of the following:**

- I/we intend to present a policy statement only.
- I/we intend to participate by cross-examination or rebuttal only.
- I/we plan to call the following witnesses to testify at the hearing.

NAME	SUBJECT OF PROPOSED TESTIMONY	ESTIMATED LENGTH OF DIRECT TESTIMONY	EXPERT WITNESS (YES/NO)
Tom Burke, P.E.	Delta hydrology, water sources and quality	30 minutes	yes
Terry Prichard	Delta water quality and use	30 minutes	yes
Chris Neudeck, P.E.	Historic Delta water quality	30 minutes	yes

(If more space is required, please add additional pages or use reverse side.)

**2) Fill in the following information of the Participant, Party, Attorney, or Other Representative:**

Name (Print): John Herrick, Esq., and Dean Ruiz (dean@hpplaw.net)

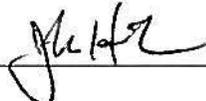
Mailing Address: 4255 Pacific Avenue, Suite 2, Stockton, CA 95207

Phone Number: (209) 956-0150 Fax Number: (209) 956-0154

E-mail: jherrlaw@aol.com

Optional:

- I/we decline electronic service of hearing-related materials.

Signature:  Dated: 10/2/15

1 Dante John Nomellini (SBN 040992)  
Daniel A. McDaniel (SBN 77363)  
2 Dante John Nomellini, Jr. (SBN 186072)  
NOMELLINI, GRILLI & McDANIEL  
3 PROFESSIONAL LAW CORPORATIONS  
Post Office Box 1461  
4 Stockton, California 95201  
Telephone: (209) 465-5883  
5 Facsimile: (209) 465-3956

6 Jennifer L. Spaletta – SBN: 200032  
David S. Green – SBN: 287176  
SPALETTA LAW PC  
7 Post Office Box 2660  
Lodi, California 95241  
8 Telephone: (209) 224-5568  
Facsimile: (209) 224-5589  
9 Email: jennifer@spalettalaw.com

10 Attorneys for  
Central Delta Water Agency

11  
12 BEFORE THE STATE WATER RESOURCES CONTROL BOARD

13  
14 PUBLIC HEARING TO DETERMINE  
15 WHETHER TO ISSUE A CEASE AND  
DESIST ORDER AGAINST WEST SIDE  
16 IRRIGATION DISTRICT

**CENTRAL DELTA WATER AGENCY'S  
NOTICE OF INTENT TO APPEAR,  
REQUEST FOR EXTENSION OF TIME  
AND NOTICE OF INTENT TO CONDUCT  
DISCOVERY**

17  
18 Pre-hearing conference date: October 19, 2015  
19 Time: 9:00 a.m.  
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1 Central Delta Water Agency (“CDWA”) respectfully submits this Notice of Intent to  
2 Appear in the West Side Irrigation District (“WSID”) Cease and Desist Order Hearing proceeding  
3 (“CDO”) and raises objections to the current scheduling for this matter that cannot be timely  
4 addressed by waiting for the October 19<sup>th</sup> pre-hearing conference.

5 **1. CDWA Intends to Appear in the WSID CDO Hearing**

6 The State Water Resources Control Board (“Board”) has scheduled the public hearing in  
7 this matter two months after issuing the notice of public hearing. The purpose of the hearing is to  
8 determine whether a CDO should be issued against WSID, a diverter from Delta channels, for  
9 diverting water in 2015 during a time that the Board’s prosecution staff alleges such diversions  
10 were unlawful.

11 CDWA intends to participate in the hearing because a fundamental issue in the hearing  
12 will be the Board’s determination of water availability in Delta channels. The CDWA Notice of  
13 Intent to Appear is attached hereto as **Exhibit A**. The water availability issue is critically  
14 important to landowners within CDWA. Any determinations made as part of the WSID CDO  
15 proceeding could have impacts for CDWA landowners. CDWA’s participation in this proceeding  
16 is not a waiver of CDWA’s position that the Board lacks jurisdiction to regulate WSID’s  
17 diversion in the first place.

18 **2. Extensions of Time are Warranted to Allow for Discovery**

19 A determination of water availability, or unavailability, requires factual testimony. The  
20 Board prosecution team will have an initial burden to prove water was unavailable for diversion  
21 by WSID. Participating parties may then present their own evidence on this issue. The parties  
22 cannot meaningfully prepare for and participate in a hearing involving these complex factual  
23 issues without first conducting discovery to learn the complete factual basis for the prosecution  
24 team’s conclusions. Parties are expressly entitled to conduct discovery before the hearing for this  
25 purpose. (See, e.g., Wat. Code, §§ 1080, 1100 [“The board or any party to a proceeding before it  
26 may, in any investigation or hearing, cause the deposition of witnesses residing within or without  
27 the state to be taken in the manner prescribed by law for depositions in civil actions in the  
28 superior courts of this state.”]; 23 C.C.R. § 649.6; see also Gov. Code, §§ 11450.10, 11450.20,  
11450.50.)

1 As currently scheduled, there is no time available to conduct discovery before the  
2 identification of witnesses (one month after notice of hearing), filing of proposed testimony (two  
3 months after notice of hearing), or the hearing (less than 2.5 months after notice of hearing).  
4 Preparing expert testimony and completing discovery takes time. CDWA, for example, must  
5 provide an individual at least 20 days to produce records requested in a deposition subpoena.  
6 (Code of Civ. Proc., § 2020.410(b).) Initial discovery often leads to further discovery, requiring  
7 additional time.

8 Requiring the parties to proceed on such a tight time schedule, without a full and fair  
9 opportunity to conduct discovery, would be a violation of due process. (See, e.g., *People v.*  
10 *Alexander* (2010) 49 Cal.4th 846, 934, *as modified on denial of reh'g* (Sept. 29, 2010) [“ ‘To  
11 effectuate the constitutional rights to counsel and to due process of law, an accused must . . . have  
12 a reasonable opportunity to prepare a defense and respond to the charges.’ ”] [citation omitted];  
13 *Sallas v. Municipal Court* (1978) 86 Cal.App.3d 737, 742 [“due process of law requires that an  
14 accused . . . have a reasonable opportunity to prepare and present his defense. . . .”].)

### 15 **3. The CDO Should be Stayed Pending Resolution of Pending Litigation on the** 16 **Same Issues**

17 CDWA also objects to the Board’s decision to proceed with a CDO hearing against WSID  
18 given the already pending litigation filed by WSID and others, including CDWA, over the factual  
19 accuracy of the Board’s water availability determinations during 2015. The Board and Courts  
20 have concurrent jurisdiction to address certain water rights issues. (See *National Audubon*  
21 *Society v. Superior Court* (1983) 33 Cal.3d 419, 451 [discussing Water Code statutes that  
22 “necessarily imply that the superior court has concurrent original jurisdiction in suits to determine  
23 water rights”].) WSID sued the Board over its water availability determinations and curtailment  
24 notices before the Board decided to proceed with a CDO against WSID, raising the same factual  
25 and legal issues. It would be improper for the Board to try to race to decide (as a quasi-judicial  
26 tribunal) the same disputed factual and legal issues in this CDO hearing which are already  
27 pending in litigation in a trial court against the Board (as a party).

28 It is also unnecessary and a waste of party resources. Any remaining CDO issues can be  
decided, if necessary, at the conclusion of the pending litigation.

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For these reasons, CDWA urges the Board to place the WSID CDO proceeding on hold, or alternatively, at a minimum, continue the hearing date and deadlines related to the proceeding for at least one year to allow adequate time for the discovery.

Respectfully submitted,

Dated: October 2, 2015

SPALETTA LAW PC



By:

\_\_\_\_\_  
JENNIFER L. SPALETTA  
Attorney for Central Delta Water Agency

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# EXHIBIT A

**NOTICE OF INTENT TO APPEAR**

Central Delta Water Agency plans to participate in the water right hearing regarding  
(name of party or participant) Public Hearing to determine whether to issue a cease and desist order  
against West Side Irrigation District

**scheduled to commence**

Pre-hearing conference on 10/19/15; hearing to commence on 11/12/15

**Check all that apply:**

- I/we intend to present a policy statement only.
- I/we intend to participate by cross-examination or rebuttal only.
- I/we decline electronic service of hearing-related materials.
- I/we plan to call the following witnesses to testify at the hearing.

NAME	SUBJECT OF PROPOSED TESTIMONY	ESTIMATED LENGTH OF DIRECT TESTIMONY	EXPERT WITNESS (YES/NO)
	CDWA reserves the right to amend this notice and identify witnesses based on information obtained in discovery.		

(If more space is required, please add additional pages or use reverse side.)

Name, Address, Phone Number and Fax Number of Attorney or Other Representative:

Signature:  Dated: October 2, 2015

Name (Print): Jennifer Spaletta of Spaletta Law; Dante Nomellini and Dante Nomellini, Jr. of  
Nomellini, Grilli & McDaniel

Mailing Address: Spaletta Law;  
PO Box 2660, Lodi, CA 95241

Nomellini, Grilli & McDaniel: 235 East Weber Avenue, Stockton, California 95202

Spaletta Law: Nomellini, Grilli & McDaniel: Spaletta Law: Nomellini, Grilli & McDaniel:  
Phone Number: (209) 224-5568 (209) 465-5883 Fax Number: (209) 224-5589 (209) 465-3956

E-mail: jennifer@spalettalaw.com, ngmplcs@pacbell.net, dantejr@pacbell.net



**NOTICE OF INTENT TO APPEAR**

The City and County of San Francisco plans to participate in the water right hearing regarding  
(name of party or participant)

Draft Cease and Desist Order  
Against  
West Side Irrigation District

The Public Hearing will commence on  
Thursday, November 12, 2015 and continue, if necessary,  
on November 13 and 16, 2015  
at 9:00 a.m.

**1) Check only one (1) of the following:**

- I/we intend to present a policy statement only.
- I/we intend to participate by cross-examination or rebuttal only.
- I/we plan to call the following witnesses to testify at the hearing. (Fill in the Following Table)

NAME	SUBJECT OF PROPOSED TESTIMONY	ESTIMATED LENGTH OF DIRECT TESTIMONY	EXPERT WITNESS (YES/NO)

(If more space is required, please add additional pages or use reverse side.)

**2) Fill in the following information of the Participant, Party, Attorney, or Other Representative:**

Name (Print): Jonathan Knapp

Mailing Address: Office of the City Attorney

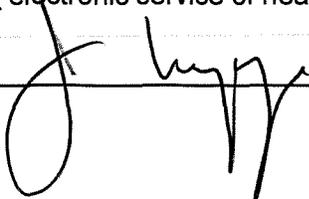
1390 Market Street, Suite 418, San Francisco, CA 94102

Phone Number: (415) 554-4261 Fax Number: (415) 554-8793

E-mail: jonathan.knapp@sfgov.org

Optional:

- I/we decline electronic service of hearing-related materials.

Signature:  Date: 10/2/15

**NOTICE OF INTENT TO APPEAR**

San Joaquin Tributaries Authority plans to participate in the water right hearing regarding  
(name of party or participant)

Draft Cease and Desist Order  
Against  
West Side Irrigation District

The Public Hearing will commence on  
Thursday, November 12, 2015 and continue, if necessary,  
on November 13 and 16, 2015  
at 9:00 a.m.

**1) Check only one (1) of the following:**

- I/we intend to present a policy statement only.
- I/we intend to participate by cross-examination or rebuttal only.
- I/we plan to call the following witnesses to testify at the hearing. (Fill in the Following Table)

NAME	SUBJECT OF PROPOSED TESTIMONY	ESTIMATED LENGTH OF DIRECT TESTIMONY	EXPERT WITNESS (YES/NO)
DAN STEINER	WATER SUPPLY	1.5 HOURS	YES
SUSAN PAULSON	HYDRODYNAMICS	1 HOUR	YES
JOHN O'HAGAN	SWB Estimate of Supply/Demand	1 HOUR	NO

(If more space is required, please add additional pages or use reverse side.)

**2) Fill in the following information of the Participant, Party, Attorney, or Other Representative:**

Name (Print): Valerie C. Kincaid

Mailing Address: 2617 K Street, Suite 100, Sacramento, CA 95816

Phone Number: (916) 599-5498 Fax Number: (916) 993-3688

E-mail: vkincaid@olaughlinparis.com

Optional:

- I/we decline electronic service of hearing-related materials.

Signature:  Date: 10/2/2015



**NOTICE OF INTENT TO APPEAR**

California Department of Water Resources plans to participate in the water right hearing regarding  
(name of party or participant)

Draft Cease and Desist Order  
Against  
West Side Irrigation District

The Public Hearing will commence on  
Thursday, November 12, 2015 and continue, if necessary,  
on November 13 and 16, 2015  
at 9:00 a.m.

**1) Check only one (1) of the following:**

- I/we intend to present a policy statement only.
- I/we intend to participate by cross-examination or rebuttal only.
- I/we plan to call the following witnesses to testify at the hearing. (Fill in the Following Table)

NAME	SUBJECT OF PROPOSED TESTIMONY	ESTIMATED LENGTH OF DIRECT TESTIMONY	EXPERT WITNESS (YES/NO)
Paul Marshall	Effects of Delta Diversions	20 minutes	Yes

(If more space is required, please add additional pages or use reverse side.)

**2) Fill in the following information of the Participant, Party, Attorney, or Other Representative:**

Name (Print): Robin McGinnis, Attorney

**Mailing**

Address: P.O. Box 942836, Sacramento, CA 94236-0001

Phone Number: (916) 657-5400 Fax Number: ( )

E-mail: robin.mcginis@water.ca.gov

**Optional:**

- I/we decline electronic service of hearing-related materials.

Signature:  Date: 10/2/15

MB/JF

### NOTICE OF INTENT TO APPEAR

Byron-Bethany Irrigation District plans to participate in the water right hearing regarding  
(name of party or participant)

Draft Cease and Desist Order  
Against  
West Side Irrigation District

The Public Hearing will commence on  
Thursday, November 12, 2015 and continue, if necessary,  
on November 13 and 16, 2015  
at 9:00 a.m.

STATE WATER RIGHTS  
BOARD  
SACRAMENTO  
2015 OCT -2 AM 10:43

**1) Check only one (1) of the following:**

- I/we intend to present a policy statement only.
- I/we intend to participate by cross-examination or rebuttal only.
- I/we plan to call the following witnesses to testify at the hearing. (Fill in the Following Table)

NAME	SUBJECT OF PROPOSED TESTIMONY	ESTIMATED LENGTH OF DIRECT TESTIMONY	EXPERT WITNESS (YES/NO)

(If more space is required, please add additional pages or use reverse side.)

**2) Fill in the following information of the Participant, Party, Attorney, or Other Representative:**

Name (Print): Daniel Kelly

Mailing Address: 500 Capitol Mall, Suite 1000, Sacramento, CA 95814

Phone Number: (916) 446-7979 Fax Number: ( )

E-mail: dkelly@somachaw.com

Optional:

- I/we decline electronic service of hearing-related materials.

Signature:  Date: October 1, 2015

FOR DANIEL KELLY