



SOMACH SIMMONS & DUNN
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW

500 CAPITOL MALL, SUITE 1000, SACRAMENTO, CA 95814
OFFICE: 916-446-7979 FAX: 916-446-8199
SOMACHLAW.COM

December 4, 2015

Via Electronic Mail

Tam M. Doduc, Hearing Officer
Frances Spivy-Weber, Hearing Officer
State Water Resources Control Board
Division of Water Rights
1001 I Street, 2nd Floor
Sacramento, CA 95814
Tam.doduc@waterboards.ca.gov
Frances.spivy-weber@waterboards.ca.gov

Re: ENF01951 and ENF01949 Objections to Prosecution Team Proposal

Dear Hearing Officers Doduc and Spivy-Weber:

The Byron Bethany Irrigation District (BBID) does not object to a combined proceeding for the purpose of addressing the issue of the availability of water for BBID to divert under its pre-1914 appropriative water right. BBID does object to the scope of such a proceeding as articulated by the Prosecution Team, the California Department of Water Resources, and the State Water Contractors.

The Prosecution Team accuses BBID of violating California Water Code section 1052 (Section 1052). Section 1052 provides, in pertinent part:

The diversion or use of water subject to this division other than as authorized in this division is a trespass.

The Prosecution Team alleges BBID violated Section 1052 because there was no water available for BBID to divert under its priority of right. The appropriate question is not whether the methodology “employed” by SWRCB staff was “adequate,” but is whether there was actually insufficient water for BBID to divert at its point of diversion between June 13 and June 25, 2015.

In order to make such a determination, the Prosecution Team will need to prove that the sources of water contributing to the water supply in the vicinity of BBID’s point of diversion were insufficient to supply a pre-1914 appropriator of BBID’s priority. The Prosecution Team must also prove that any water in the vicinity of BBID’s point of Diversion that was available for appropriation by diverters “senior” to BBID was actually

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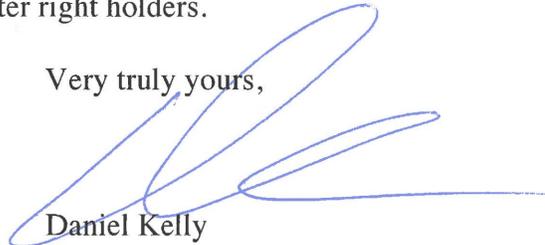
needed by those senior appropriators and that those senior appropriators were injured by BBID's diversion of water.

Thus, the appropriate issues for a combined proceeding are:

- What are the sources of water present at the BBID and West Side Irrigation District (WSID) points of diversion during the periods of alleged violations?
- What are the senior demands in the vicinity of the BBID and WSID points of diversion?

The burden of proof rests with Prosecution Team to prove that there was no water available at the BBID and WSID points of diversion during the period of alleged violation and that, to the extent water was available, that any such water was required to meet senior water right demands and that diversion of water by BBID and/or WSID caused injuries to those senior water right holders.

Very truly yours,



Daniel Kelly
General Counsel
Byron-Bethany Irrigation District

DJK:yd

**SERVICE LIST OF PARTICIPANTS
 BYRON-BETHANY IRRIGATION DISTRICT
 ADMINISTRATIVE CIVIL LIABILITY HEARING**
 (Revised 9/2/15; Revised: 9/11/15)

<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 Avenue, 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>Central Delta Water Agency Jennifer Spaletta Law PC P.O. Box 2660 Lodi, CA 95241 jennifer@spalettalaw.com</p> <p>Dante John Nomellini Daniel A. McDaniel Dante John Nomellini, Jr. NOMELLINI, GRILLI & MCDANIEL 235 East Weber Avenue Stockton, CA 95202 ngmplcs@pacbell.net dantejr@pacbell.net</p>	<p>California Department of Water Resources Robin McGinnis, Attorney P.O. Boc 942836 Sacramento, CA 94236-0001 robin.mcginnis@water.ca.gov</p>
<p>Richard Morat 2821 Berkshire Way Sacramento, CA 95864 rmorat@gmail.com</p>	<p>San Joaquin Tributaries Authority Tim O'Laughlin Valerie C. Kincaid O'Laughlin & Paris LLP 2617 K Street, Suite 100 Sacramento, CA 95816 towater@olaughlinparis.com vkincaid@olaughlinparis.com</p>

South Delta Water Agency
John Herrick
Law Offices of John Herrick
4255 Pacific Avenue, Suite 2
Stockton, CA 95207
Email: Jherrlaw@aol.com

State Water Contractors
Stefani Morris
1121 L Street, Suite 1050
Sacramento, CA 95814
smorris@swc.org

**SERVICE LIST
WEST SIDE IRRIGATION DISTRICT
CEASE AND DESIST ORDER HEARING**

<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 Harringfeld Janelle Krattiger Herum\Crabtree\Suntag 5757 Pacific Avenue, Suite 222 Stockton, CA 95207 jzolezzi@herumcrabtree.com kharringfeld@herumcrabtree.com jkrattiger@herumcrabtree.com</p>
<p>State Water Contractors Stefani Morris 1121 L Street, Suite 1050 Sacramento, CA 95814 smorris@swc.org</p>	<p>Westlands Water District Daniel O'Hanlon Rebecca Akroyd Kronick Moskovitz Tiedemann & Girard 400 Capitol Mall, 27th Floor Sacramento, CA 95814 dohanlon@kmtg.com rakroyd@kmtg.com</p> <p>Phillip Williams of Westlands Water District pwilliams@westlandswater.org</p>
<p>South Delta Water Agency John Herrick Law Offices of John Herrick 4255 Pacific Avenue, Suite 2 Stockton, CA 95207 Email: Jherrlaw@aol.com</p>	<p>Central Delta Water Agency Jennifer Spaletta Law PC P.O. 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>

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	San Joaquin Tributaries Authority Valerie C. Kincaid O'Laughlin & Paris LLP 2617 K Street, Suite 100 Sacramento, CA 95816 vkincaid@olaughlinparis.com
Byron-Bethany Irrigation District Daniel Kelly Somach Simmons & Dunn 500 Capitol Mall, Suite 1000 Sacramento, CA 95814 dkelly@somachlaw.com	California Department of Water Resources Robin McGinnis, Attorney P.O. Box 942836 Sacramento, CA 94236-0001 robin.mcginis@water.ca.gov