



EDMUND G. BROWN JR.
GOVERNOR

MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

State Water Resources Control Board

November 6, 2015

VIA ELECTRONIC MAIL

TO: ENCLOSED SERVICE LIST OF PARTICIPANTS

PROCEDURAL RULING: THE WEST SIDE IRRIGATION DISTRICT DRAFT CEASE AND DESIST ORDER HEARING - ENFORCEMENT ACTION (ENF01949)

This letter addresses remaining procedural issues raised during the State Water Resources Control Board's (State Water Board) October 19, 2015 pre-hearing conference and in my October 23, 2015 ruling.

Rescheduled Hearing and Document Submittal Deadline Schedule

In accordance with my [October 23, 2015 ruling](#), the hearing has been rescheduled to commence on Monday, January 11, 2016, to be continued, as necessary, on January 12 through 15, 2016, and will reconvene on February 4 and 5, 2016. A Notice of Rescheduled Public Hearing will be issued.

The new hearing schedule and submittal deadlines are shown in the table below. The schedule is based on comments submitted by the Division of Water Rights Prosecution Team (Prosecution Team) and The West Side Irrigation District (WSID) in response to staff's [October 27, 2015 request](#).

Hearing Schedule and Submittal Deadlines	
Noon, Tuesday, December 22, 2015	Deadline for receipt and service of witnesses' proposed testimony, exhibits, lists of exhibits, qualifications, and statements of service.
Noon, Monday, January 4, 2016	Deadline for receipt and service of parties' written policy and opening statements.
Noon, Monday, January 4, 2016	Deadline for receipt and service of opening briefs and any pre-hearing motions.
Monday, January 11-15, 2016	Public hearing commences on January 11 th and continues, as necessary, until cases-in-chief are concluded, including summary of witness testimony, cross-examination, and if allowed redirect, and recross examination. Exhibits will be offered into evidence at the conclusion of each party's case-in-chief.
Noon, Friday, January 22, 2016	Deadline for receipt and service of witnesses' proposed rebuttal testimony, exhibits, list of exhibits, qualifications, and statements of service.

FELICIA MARCUS, CHAIR | THOMAS HOWARD, EXECUTIVE DIRECTOR

Hearing Schedule and Submittal Deadlines (continued)	
Thursday, February 4-5, 2016	Public hearing continues for oral summation of written rebuttal testimony (time permitting) and cross-examination of witnesses. Rebuttal exhibits will be offered into evidence at the conclusion of each party's presentation of proposed rebuttal evidence.

The hearing team requested input from the parties concerning the deadlines for submittal of written testimony and exhibits in support of the parties' cases-in-chief and rebuttal evidence. The Prosecution Team and WSID responded to this request. The Prosecution Team proposed a submittal deadline for evidence in support of cases-in-chief of December 9, 2015, and a submittal deadline for rebuttal evidence of January 6, 2016. WSID proposed a submittal deadline for evidence in support of cases-in-chief of twenty business days after completion of all depositions and disclosure of documents requested under the Public Records Act. WSID proposed a submittal deadline for rebuttal evidence of twenty business days following the deadline for evidence in support of cases-in-chief. The above schedule reflects an accommodation of both requests to the extent feasible given the constraints imposed by the limitations on available hearing dates.

With the exception of the deposition of Mr. Michael George, as currently noticed to be held on December 7, 2015, all other depositions are scheduled to be completed by November 23, 2015. The deadline for submittal of evidence in support of the parties' cases in chief is set nineteen business days after November 23, 2015. The deadline for submittal of rebuttal evidence is set for approximately twenty business days after submittal of evidence in support of cases-in-chief. If the parties believe that they will be prejudiced in the presentation of their case because of information discovered during the deposition of Mr. George, or because of documents disclosed after November 23, 2015, the parties may request an extension of time to submit relevant evidence related to that particular issue with a showing of good cause as to why the evidence could not have been submitted in a timely manner.

Pursuant to the hearing team's request for the availability of the parties during the months of February and March, South Delta Water Agency (SDWA) is the only party who indicated that it has a conflict on February 4 and 5, 2016. SDWA did not provide any additional information regarding this conflict or whether the conflict could be resolved. Because of the unavailability of WSID's attorney in the latter part of February, and the unavailability of multiple other parties on remaining dates in February and March, I am scheduling February 4 and 5, 2016, for the presentation of summaries of rebuttal testimony and cross-examination of rebuttal witnesses. I expect that because SDWA is represented by co-counsel, and in the absence of more information regarding the nature of the conflict, SDWA can accommodate these dates for the timely completion of the scheduled proceeding. Should any of SDWA's rebuttal witnesses be unavailable on February 4 and 5, I will allow for their testimony and cross-examination during the January hearing dates.

Second Pre-Hearing Conference

I am not planning to conduct a second pre-hearing conference. I will provide additional information regarding time limits for presentation of rebuttal testimony and cross-examination of rebuttal witnesses after the conclusion of the parties' cases-in-chief.

Stipulations as to Matters not in Dispute

The Prosecution Team and WSID should continue to confer regarding stipulations as to undisputed facts so as to streamline the hearing process. Stipulations should be submitted as soon as possible to eliminate unnecessary testimony.

Opening Briefs and Motions

I will allow the parties to submit opening briefs, to be received by noon on January 4, 2016. Any pre-hearing motions must also be received by noon on January 4, 2016. Opening briefs and pre-hearing motions are subject to the following page limitations: a) opening briefs -10 pages; b) motions - 10 pages. Parties electing to file a joint brief or motion are allowed up to 20 pages.

Order of Presentation and Limits for Policy Statements, Opening Statements, and Direct Testimony (Cases-in-Chief)

At this time, I am setting the following time limits for the presentation of opening or policy statements and direct testimony. I may modify these limits based on the requests of the parties to combine their allowed time, or as necessary during the hearing to avoid duplicative testimony or to otherwise maintain the efficiency of the hearing.

1. Opening/Policy Statements

I encourage the parties to submit a written opening statement or policy statement limited to no more than 10 pages. Oral opening statements by parties participating by rebuttal or cross-examination only will be limited to five (5) minutes. Policy statements by any other persons will also be limited to five (5) minutes. The order of presentation is as follows:

1. Central Delta Water Agency (five (5) minutes)
2. Byron-Bethany Irrigation District (five (5) minutes)
3. Westlands Water Company (five (5) minutes)
4. City and County of San Francisco (five (5) minutes)
5. State Water Contractors (five (5) minutes)
6. All other persons (five (5) minutes)

The parties may choose to combine their allowed time for opening or policy statements with that of other parties.

2. Opening Statements

Opening statements by parties presenting a case-in-chief will be limited to twenty (20) minutes. The order of presentation is as follows:

1. Division of Water Rights Prosecution Team (twenty (20) minutes)
2. The West Side Irrigation District (twenty (20) minutes)
3. California Department of Water Resources (twenty (20) minutes)
4. South Delta Water Agency (twenty (20) minutes)
5. San Joaquin Tributaries Authority (twenty (20) minutes)

The parties may choose to combine their allowed time for opening statements with that of other parties.

3. 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. Additional time may be allowed upon an offer of proof as to the substance, purpose, and relevancy of the expected testimony. The order of presentation is as follows:

1. Division of Water Rights Prosecution Team (one (1) hour)
2. The West Side Irrigation District (one (1) hour)
3. California Department of Water Resources (twenty (20) minutes)
4. South Delta Water Agency (one (1) hour)
5. San Joaquin Tributaries Authority (one (1) hour)

The parties may choose to combine their allowed time for direct testimony with that of other parties.

Order of Presentation: Cross-Examination of Witnesses

Cross examination is not limited to the scope of direct testimony. (Cal. Code Regs., tit. 23, § 648.5.1; Gov. Code, § 11513, subd. (b).) Cross-examination should, however, be limited to the factual issues in dispute. I will not permit the parties to attempt to make legal or policy arguments during the evidentiary portion of the hearing through cross-examination, the presentation of direct testimony, or otherwise. The scope of cross-examination of any redirect, if allowed, or rebuttal testimony will be limited to the scope of the redirect or rebuttal testimony, respectively.

At this time, I am setting the following time limits for cross-examination. I may modify these limits based on the requests of the parties to combine their allowed time, or as necessary during the hearing to avoid duplicative testimony or to otherwise maintain the efficiency of the hearing. WSID and the Prosecution Team will be limited to one (1) hour to cross-examine each witness or panel of witnesses, and all other parties will be limited to ten (10) minutes to cross-examine each witness or panel of witnesses. The order of presentation is as follows:

1. Division of Water Rights Prosecution Team (one (1) hour)
2. The West Side Irrigation District (one (1) hour)

3. California Department of Water Resources (ten (10) minutes)
4. South Delta Water Agency (ten (10) minutes)
5. San Joaquin Tributaries Authority (ten (10) minutes)
6. Central Delta Water Agency (ten (10) minutes)
7. Byron-Bethany Irrigation District (ten (10) minutes)
8. Westlands Water Company (ten (10) minutes)
9. City and County of San Francisco (ten (10) minutes)
10. State Water Contractors (ten (10) minutes)

The parties may choose to combine their allowed time for cross-examination with that of other parties.

Redirect and Recross Examination

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

Redirect and recross examination will follow the same order as presentation of cases-in-chief and cross-examination, respectively.

Rebuttal Testimony

Rebuttal testimony must be received by noon on January 22, 2016, in writing after completion of all cases-in-chief, as scheduled above. Parties may present an oral summation of submitted written rebuttal testimony during the hearing, after all parties have presented their cases-in-chief and their witnesses have been cross-examined if time allows. Parties should offer any rebuttal exhibits into evidence after presenting rebuttal testimony.

Rebuttal testimony and cross-examination will follow the same order of presentation of cases-in-chief and cross-examination, respectively.

Closing Briefs

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

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

Sincerely,



Frances Spivy-Weber, Vice-Chair
Hearing Officer

Enclosure: 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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