

STATE WATER RESOURCES CONTROL BOARD

In the matter of Administrative Civil Liability Complaint issued against Byron-Bethany Irrigation District;

In the matter of Draft Cease and Desist Order issued against West Side Irrigation District

Prosecution Team's Motion for Protective Orders

INTRODUCTION

The Division of Water Rights Prosecution Team hereby requests that the Hearing Officers in the West Side Irrigation District (WSID) Draft Cease and Desist Order (CDO) and the Byron-Bethany Irrigation District (BBID) Administrative Civil Liability Complaint (ACLC) matters grant protective orders limiting pre-hearing discovery in each matter. Specifically, the Prosecution Team requests that: (1) the parties should be required to coordinate discovery requests in order to avoid duplicative or overly burdensome requests; (2) the parties should be prohibited from conducting depositions on Prosecution Team witnesses prior to the evidence and witness statement submittal deadlines; and (3) the parties should be prohibited from serving discovery requests seeking witness statements prior to the evidence and witness statement submittal deadlines.

BACKGROUND

The WSID CDO and BBID ACLC administrative enforcement matters share nearly uniform party and counsel lists.¹ Both matters involve allegations of actual or threatened diversions of water during periods in which State Water Board staff had determined that no water was available to serve particular water right classifications. Several parties to the WSID and BBID matters have challenged these staff determinations and subsequent notifications (generally referred to as "Unavailability Notices") in lawsuits now coordinated as the California Water Curtailment Cases (JCCP 4838) in the Superior Court of California, County of Santa Clara (Case #1-15-CV-285-182).² Based on the various Notices of Intent and other party communications, most or all of the parties not directly named in each administrative enforcement action intend to focus their participation in the enforcement actions on the Unavailability Notices and the underlying staff determinations.

¹ Mr. Richard Morat is party to the BBID ACLC but not the WSID CDO. Mr. Morat is unrepresented. Banta-Carbona Irrigation District and Patterson Irrigation District are parties to the BBID ACLC but not the WSID CDO, and they share counsel with WSID. Westlands Water District is party to the WSID CDO, but not the BBID ACLC. Westlands' counsel does not represent any parties in the BBID ACLC matter. The parties and counsel are otherwise identical between the matters, and BBID and WSID are party to both. (See attached Service Lists.)

² Banta-Carbona Irrigation District, BBID, Central Delta Water Agency, Patterson Irrigation District, San Joaquin Tributaries Authority, South Delta Water Agency and WSID are all Plaintiffs in the California Water Curtailment Cases. The Department of Water Resources is an interested party. (See <http://www.scefiling.org/cases/parties/partylist.jsp?caseId=1159> [last accessed October 15, 2015].)

Prosecution Team's Motion for Protective Order

The BBID ACLC hearing has been rescheduled to commence on March 21, 2016, in part to allow the parties to prepare witnesses and conduct discovery. The deadline for submitting written testimony and exhibits is January 18, 2016. The deadline for submitting rebuttal testimony and exhibits is February 22, 2016.

The WSID CDO hearing is currently scheduled to commence on November 12, 2015, with written testimony and exhibits due on November 4, 2015. The Hearing Officer has indicated that she will consider various requests for postponement of the schedule during the October 19, 2015, Pre-Hearing Conference.

On October 12, 2015, the Prosecution Team provided an Initial Disclosure of documents responsive to Public Records Act (PRA) requests submitted by BBID and WSID. The Initial Disclosure totaled approximately 3.3 gigabytes of electronic data. Among many other things, the Initial Disclosure consists of all or nearly all the technical records and files relating to the Unavailability Notices issued in 2014 and 2015, and relating to the BBID and WSID enforcement actions. In short, outside of witness statements and documents that may have been inadvertently not-yet-identified in the Division's files, the parties have access to essentially the entire technical record that may form the basis for the Prosecution Team's case-in-chief evidence in these matters. The Prosecution Team is still reviewing a large number of electronic mail records and additional disclosures of those records will take place over the next several days.

On October 12, counsel for the Prosecution Team and counsel for BBID, WSID, Central Delta Water Agency (CDWA) and South Delta Water Agency (SDWA) (collectively "Delta Parties") discussed the potential for depositions of party witnesses. Counsel for the Delta Parties indicated that they would like to conduct depositions of each Prosecution Team witness beginning on October 22, and that each deposition would last at least one full day.

On October 13, the Prosecution Team proposed that all parties to both matters coordinate discovery, and that the parties agree to schedule depositions, if at all, only after the witness statement and evidence submittal deadlines in each matter. The Prosecution Team also proposed that the parties agree that they may submit document requests as necessary prior to the witness statement and evidence submittal deadlines. The Prosecution Team asked that the parties provide a response by close-of-business on October 14.

Counsel for San Joaquin Tributaries Authority partially accepted the proposal. Counsel for Westlands Water District and the Department of Water Resources accepted the Prosecution Team's proposal, as has Mr. Richard Morat. On October 14, counsel for WSID indicated that she would immediately issue deposition subpoenas. On October 15, counsel for SDWA rejected the Prosecution Team's proposal. Copies of the Prosecution Team's October 13 email proposal, and the subsequent communications referenced here, are attached to the Declaration of Andrew Tauriainen submitted concurrently herewith.³

³ On October 15, as the Prosecution Team was completing this motion, BBID, CDWA, SDWA and WSID separately served deposition notices and subpoenas to Prosecution Team witnesses Brian Coats, Kathy Mrowka and Jeffrey Yeazell. The parties apparently seek depositions of at least one day beginning on October 26, and seek documents that appear to have been or to be disclosed in the Prosecution Team's PRA disclosures. The Prosecution Team reserves the right to request specific protective orders or move to quash these specific requests, should the Hearing Officers not be inclined to issue the general protective orders sought here.

Prosecution Team's Motion for Protective Order

LEGAL STANDARD

The Water Code governs the State Water Board's hearing and discovery procedures, and incorporates elements of the Administrative Procedure Act and the Civil Discovery Act (Title 4 [commencing with Section 2016.010] of Part 4 of the Code of Civil Procedure). (See generally Wat. Code § 1100; Gov. Code § 11400 et seq.; Cal. Code Regs., tit.23, §§ 648, 648.4.) The Board or any party to proceedings before the Board may take depositions of witnesses in accordance with the Civil Discovery Act. (Wat. Code § 1100.) A party's attorney of record may issue a subpoena for attendance at a hearing or a subpoena *duces tecum* for the production of documents. (Gov. Code §§ 11450.10, 11450.20; see also Cal. Code Regs., tit. 23, § 649.6.)

The right to discovery is not unlimited. The Hearing Officer may issue a protective order prohibiting or limiting depositions in order to protect a party or deponent from undue burden and expense. (Cal. Code Civ. Proc., § 2025.420, subd. (b).) The Hearing Officer may issue a protective order if the discovery sought would be "unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive." (*Id.*, § 2019.030, subds. (a) & (b).) The Hearing Officer may issue a protective order to protect a person served with a subpoena or subpoena *duces tecum* from unreasonable or oppressive demands. (Gov. Code § 11450.30.)

State Water Board Hearing Officers have issued protective orders or otherwise limited discovery requests made prior to deadlines for submitting evidence and witness statements. In the *Cachuma Project Hearing – Applications 11331 and 11332*, the Hearing Officer granted a protective order directing the parties to reschedule depositions and document production demands for after the evidence and witness statement deadline. (See Cachuma Project Hearing Officer's Ruling dated September 26, 2003, at pp. 2-5⁴.)

In the *Water Right Hearing Regarding Proposed Cease and Desist Order Against Millview County Water District, Thomas P. Hill, and Steven L. Gomes*, the Hearing Officer denied Millview et al.'s request for pre-hearing discovery including depositions, special interrogatories, inspection demands, and requests for admissions. (Hearing Officer's Ruling dated December 3, 2009.⁵) The Hearing Officer found that a protective order was warranted because the discovery sought was obtainable from a more convenient, less burdensome, and less expensive source. (*Id.* at 2.) The Hearing Officer noted that the legal and factual basis for the proposed enforcement action was described in the charging document, the hearing procedures directed the Prosecution Team to submit written testimony and exhibits prior to the hearing, and that other information could be obtained by reviewing the Division of Water Rights' files. (*Id.*) The Hearing Officer noted that Millview, et al., could choose to initiate discovery after reviewing the Prosecution Team's exhibits and State Water Board files. (*Id.* at 3.) Finally, the Hearing Officer noted that the governing law does not authorize all forms of discovery (e.g., interrogatories, inspection demands and requests for admission) in State Water Board proceedings. (*Id.*) The Court of Appeal upheld the *Millview* Hearing Officer's ruling. (*Millview County Water Dist. v. SWRCB* (1st Dist. Ct. App., 2014) 229 Cal.App.4th 879, 906.)

⁴ Available at http://www.waterboards.ca.gov/waterrights/water_issues/programs/hearings/cachuma/phase2/discovery/motion2003sept26.pdf [last accessed October 15, 2015].

⁵ Available at http://www.waterboards.ca.gov/waterrights/water_issues/programs/hearings/millview/docs/hearofficerruling120309.pdf [last accessed October 15, 2015].

Prosecution Team's Motion for Protective Order

ARGUMENT

The Prosecution Team first requests that the Hearing Officers issue protective orders directing all parties to coordinate any discovery requests in order to avoid duplicative or overly burdensome requests. Given the nearly identical party and counsel lists between the BBID ACLC and WSID CDO matters, such an order would not cause undue burden on any party, whereas duplicative requests from separate parties or party groups would cause undue burden on the receiving parties.

Next, the Prosecution Team requests that the Hearing Officers issue protective orders directing the parties to wait until after reviewing the Prosecution Team's written witness testimony and case-in-chief evidence submitted pursuant to the hearing notices in each matter before attempting to schedule depositions of Prosecution Team witnesses. The charging documents specify the legal and factual bases in each matter. The Prosecution Team has provided an Initial Disclosure under the PRA of the technical files relating to the Unavailability Notices and underlying staff determinations, among many other things, and the Prosecution Team will provide additional disclosures of remaining electronic mail and any additional technical records as it identifies responsive documents. The hearing notices in each matter provide that the parties must submit evidence and written witness testimony before hearing. The BBID ACLC hearing procedures call for an *additional* pre-hearing submittal of rebuttal evidence and written witness statements well in advance of hearing.

It is difficult to imagine any need for pre-submittal depositions of Prosecution Team witnesses under these circumstances. Moreover, pre-submittal depositions and document requests will place an undue burden on Prosecution Team staff should they have to sit for potentially lengthy depositions while preparing witness statements and supporting evidence, only to have additional depositions sought after the witness statements are submitted. Any propounding party must bear the burden of justifying the additional discovery and explaining why any information sought through deposition and document subpoenas cannot be obtained from a more convenient, less burdensome and less expensive source.⁶

The parties may find cause, however, to seek documents and other records through subpoena *duces tecum* ahead of the evidence and witness submittal deadlines, if such documents are necessary to help prepare a case-in-chief and not otherwise available from a more convenient, less burdensome and less expensive source. The Prosecution Team therefore requests that the protective orders allow such document requests, provided that the parties do not seek copies of written witness statement in advance of the witness statement submittal deadlines.

In making these requests, the Prosecution Team does not concede that the parties are automatically entitled to depositions or additional document requests after the evidence and witness statement submittal deadlines. The burden to justify additional discovery falls on the propounding parties, and the Prosecution Team reserves the right to seek additional protective orders or move to quash any additional discovery requests.

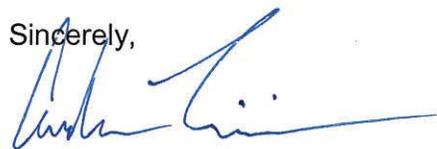
CONCLUSION

⁶ Should the Hearing Officers be inclined to reject this request for general protective orders, the Prosecution Team reserves the right to seek specific protective orders or to move to quash the deposition and document requests submitted by BBID, CDWA, SDWA and WSID on October 15, 2015, and against any other deposition subpoenas or document requests served by any other parties between now and the Hearing Officers' rulings.

Prosecution Team's Motion for Protective Order

For the above reasons, the Prosecution Team requests that the Hearing Officers issue protective orders in these matters.

Sincerely,

A handwritten signature in blue ink, appearing to read "Andrew Tauriainen", with a long horizontal flourish extending to the right.

Andrew Tauriainen

OFFICE OF ENFORCEMENT
Attorney for the Prosecution Team

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

<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>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 Stefani Morris, Attorney 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>Philip Williams of Westlands Water District pwilliams@westlandswater.org</p>
<p>South Delta Water Agency John Herrick, Esq. 4255 Pacific Ave., Suite 2 Stockton, CA 95207 jherrlaw@aol.com</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 Johnathan 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 vkincaid@olaughlinparis.com</p>
<p>California Department of Water Resources Robin McGinnis, Attorney PO Box 942836 Sacramento, CA 94236-0001 robin.mcginis@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>

**SERVICE LIST OF PARTICIPANTS
BYRON-BETHANY IRRIGATION DISTRICT
ADMINISTRATIVE CIVIL LIABILITY HEARING
(09/02/15; Revised 09/11/15)**

<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 Ave., Suite 222 Stockton, CA 95207 jzolezzi@herumcrabtree.com</p>	<p>City and County of San Francisco Johnathan 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 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>California Department of Water Resources Robin McGinnis, Attorney PO Box 942836 Sacramento, CA 94236-0001 robin.mcginnis@water.ca.gov</p>
<p>Richard Morat 2821 Berkshire Way Sacramento, CA 95864 rjmorat@gmail.com</p>	<p>San Joaquin Tributaries Authority Valeri Kincaid O’Laughlin & Paris LLP 2617 K Street, Suite 100 Sacramento, CA 95814 vkincaid@olaughlinparis.com</p>
<p>South Delta Water Agency John Herrick, Esq. 4255 Pacific Ave., Suite 2 Stockton, CA 95207 jherlaw@aol.com</p>	<p>State Water Contractors Stefani Morris, Attorney 1121 L Street, Suite 1050 Sacramento, CA 95814 smorris@swc.org</p>

STATE WATER RESOURCES CONTROL BOARD

In the matter of Administrative Civil Liability Complaint issued against Byron-Bethany Irrigation District;

In the matter of Draft Cease and Desist Order issued against West Side Irrigation District

Declaration of Andrew Tauriainen in Support of Motion for Protective Orders

I, Andrew Tauriainen, declare as follows:

1. I am a Staff Counsel III (Specialist) with the State Water Resources Control Board's Office of Enforcement. I have been a practicing attorney since 2001, California State Bar No. 214837. I joined the Office of Enforcement in 2011. I represent the Prosecution Team in the Administrative Civil Liability Complaint (ACLC) issued against Byron-Bethany Irrigation District (BBID), and in the Draft Cease and Desist Order (CDO) issued against West Side Irrigation District (WSID).
2. On October 12, 2015, I participated in a conference call with counsel representing BBID, WSID, Central Delta Water Agency (CDWA) and South Delta Water Agency (SDWA) (collectively "Delta Parties"), to discuss the potential for depositions in the BBID ACLC and WSID CDO matters. Counsel for the Delta Parties requested full day depositions of the Prosecution Team's witnesses in each matter, beginning on October 22.
3. On October 13, 2015, I sent an email message to the representatives for all parties in the BBID ACLC and WSID CDO matters, proposing that all Parties coordinate on potential discovery in order to avoid duplicative or overly burdensome requests, and that the parties agree to not seek depositions until after the deadline for submitting written witness statements and evidence in these matters. I proposed that the parties could, however, seek certain document requests. A true and correct copy of the October 13, 2015, email message is Attachment 1 hereto.
4. To date, I have received email responses from Mr. Richard Morat (Attachment 2), and counsel for Westlands Water District (Attachment 3) and the Department of Water Resources (Attachment 4), indicating agreement with the October 13 proposal. I received an email response from counsel for San Joaquin Tributaries Authority (Attachment 5), indicating agreement with the need to seek discovery, but not responsive to the other requests. I received an email from counsel for SDWA (Attachment 6) and a letter from counsel for WSID (Attachment 7) rejecting the October 13 proposals. Attachments 2 through 7 are true and correct copies.
5. At the time of this declaration, I have received no communications from any other party indicating an affirmative acceptance or denial of any element of the October 13 proposal.

State Water Resources Control Board
Byron-Bethany Irrigation District ACLC
West Side Irrigation District CDO

I declare under penalty of perjury to the laws of the State of California that the foregoing is true and correct. Executed this 15th day of October 2015, at Sacramento, California.

A handwritten signature in blue ink, appearing to read "Andrew Tauriainen", written over a horizontal line.

Andrew Tauriainen

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CEASE AND DESIST ORDER HEARING
(October 8, 2015)**

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<p>California Department of Water Resources Robin McGinnis, Attorney PO Box 942836 Sacramento, CA 94236-0001 robin.mcginis@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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(09/02/15; Revised 09/11/15)**

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<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 Johnathan 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 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>California Department of Water Resources Robin McGinnis, Attorney PO Box 942836 Sacramento, CA 94236-0001 robin.mcginnis@water.ca.gov</p>
<p>Richard Morat 2821 Berkshire Way Sacramento, CA 95864 rjmorat@gmail.com</p>	<p>San Joaquin Tributaries Authority Valeri Kincaid O’Laughlin & Paris LLP 2617 K Street, Suite 100 Sacramento, CA 95814 vkincaid@olaughlinparis.com</p>
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Tauriainen, Andrew@Waterboards

From: McGinnis, Robin C.@DWR
Sent: Wednesday, October 14, 2015 4:56 PM
To: Tauriainen, Andrew@Waterboards
Cc: Morrow, Michelle@DWR
Subject: RE: BBID WSID Discovery Requests

Andrew,

To the extent that depositions and document requests are allowed for these proceedings (see Evidence Code §§ 801-805; Government Code §§ 11400 et seq. and 11513; and Cal. Code Regs., title 23, § 647 et seq.), DWR agrees that depositions should take place, if at all, only after the witness statement and evidence submittal deadlines in each matter, and that the Parties may submit document requests as necessary prior to the witness submittal deadline.

Robin

Robin McGinnis
Attorney
Office of the Chief Counsel
Department of Water Resources
Direct: (916) 657-5400
robin.mcginis@water.ca.gov

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From: Tauriainen, Andrew@Waterboards
Sent: Tuesday, October 13, 2015 3:37 PM
To: Jeanne Zolezzi; kharrigfeld@herumcrabtree.com; Janelle Krattiger; Stephanie Morris (smorris@swc.org); O'Hanlon, Daniel; Akroyd, Rebecca@KMTG; Philip Williams (pwilliams@westlandswater.org); Herrick, John @aol.com; 'Jennifer Spaletta' (jennifer@spalettalaw.com); ngmplcs@pacbell.net; "Dante Nomellini, Jr." (dantejr@pacbell.net); Jonathan Knapp (jonathan.knapp@sfgov.org); Valerie Kincaid; McGinnis, Robin C.@DWR; Dan Kelly (dkelly@somachlaw.com); rjmorat@gmail.com
Cc: Mrowka, Kathy@Waterboards
Subject: BBID WSID Discovery Requests

To the Parties in the BBID and WSID administrative enforcement proceedings:

Yesterday I spoke with counsel for BBID, WSID (& Banta-Carbona ID/Patterson ID), SDWA and CDWA regarding potential depositions of Prosecution Team witnesses in the BBID and WSID enforcement actions. Counsel expressed a desire to schedule depositions of each Prosecution Team witness starting next week. This raises two issues. First, the Prosecution Team asks that all Parties coordinate on potential discovery in order to avoid duplicative or overly burdensome requests.

Second, the Prosecution Team remains unconvinced that depositions will be necessary in these actions given the extensive document production already underway and the pre-hearing witness statement submittals. In any event, conducting depositions prior to the witness statement submittals is highly inefficient given the possibility that some or all of the Parties may request additional depositions after reviewing the witness statements.

The Prosecution Team proposes that depositions should take place, if at all, only after the witness statement and evidence submittal deadlines in each matter. The Prosecution Team also proposes that the Parties may submit document requests as necessary prior to the witness submittal deadline.

Please let me know by close of business on Wednesday, October 14, if you agree to these proposals. If you agree, we can jointly submit them to the Hearing Officers in each matter this week, in order to be able to address them at the WSID Pre-Hearing Conference on Monday.

Andrew Tauriainen, Attorney III
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Tauriainen, Andrew@Waterboards

From: Valerie Kincaid <vkincaid@olaughlinparis.com>
Sent: Tuesday, October 13, 2015 4:03 PM
To: Tauriainen, Andrew@Waterboards
Subject: RE: BBID WSID Discovery Requests

Andrew –

We definitely agree discovery should be coordinated. Before we respond to the remainder of your proposal, can you tell me how it would deal with deposition of parties that neither prosecution team or hearing team is calling? Since those parties will not submit statements – would your proposal allow for deposition at any time?

Thanks

Valerie

VALERIE C. KINCAID
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From: Tauriainen, Andrew@Waterboards [<mailto:Andrew.Tauriainen@waterboards.ca.gov>]
Sent: Tuesday, October 13, 2015 3:37 PM
To: Jeanne Zolezzi; kharrigfeld@herumcrabtree.com; Janelle Krattiger; Stephanie Morris (smorris@swc.org); O'Hanlon, Daniel; Akroyd, Rebecca@KMTG; Philip Williams (pwilliams@westlandswater.org); Herrick, John @aol.com; 'Jennifer Spaletta' (jennifer@spalettalaw.com); ngmplcs@pacbell.net; "Dante Nomellini, Jr." (dantejr@pacbell.net); Jonathan Knapp (jonathan.knapp@sfgov.org); Valerie Kincaid; McGinnis, Robin C.@DWR; Dan Kelly (dkelly@somachlaw.com); rjmorat@gmail.com
Cc: Mrowka, Kathy@Waterboards
Subject: BBID WSID Discovery Requests

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Andrew Tauriainen, Attorney III
State Water Resources Control Board
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Tauriainen, Andrew@Waterboards

From: Jherrlaw@aol.com
Sent: Thursday, October 15, 2015 8:32 AM
To: Tauriainen, Andrew@Waterboards
Subject: Re: BBID WSID Discovery Requests

I was not available most of yesterday and so was not able to respond to your email until now. SDWA does not agree that depositions should occur after submittal of testimony. I am a bit confused at the Prosecution Team's position that since the SWRCB documents dealing with curtailments were posted, there is no real reason for depositions. Clearly under any process the parties should be able to ask questions of witnesses under oath to determine facts, positions and reasoning ahead of any hearing. JOHN

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In a message dated 10/13/2015 3:36:38 P.M. Pacific Daylight Time, Andrew.Tauriainen@waterboards.ca.gov writes:

To the Parties in the BBID and WSID administrative enforcement proceedings:

Yesterday I spoke with counsel for BBID, WSID (& Banta-Carbona ID/Patterson ID), SDWA and CDWA regarding potential depositions of Prosecution Team witnesses in the BBID and WSID enforcement actions. Counsel expressed a desire to schedule depositions of each Prosecution Team witness starting next week. This raises two issues. First, the Prosecution Team asks that all Parties coordinate on potential discovery in order to avoid duplicative or overly burdensome requests.

Second, the Prosecution Team remains unconvinced that depositions will be necessary in these actions given the extensive document production already underway and the pre-hearing witness statement submittals. In any event, conducting depositions prior to the witness statement submittals is highly inefficient given the possibility that some or all of the Parties may request additional depositions after reviewing the witness statements.

The Prosecution Team proposes that depositions should take place, if at all, only after the witness statement and evidence submittal deadlines in each matter. The Prosecution Team also proposes that the Parties may submit document requests as necessary prior to the witness submittal deadline.

Please let me know by close of business on Wednesday, October 14, if you agree to these proposals. If you agree, we can jointly submit them to the Hearing Officers in each matter this week, in order to be able to address them at the WSID Pre-Hearing Conference on Monday.

Andrew Tauriainen, Attorney III

State Water Resources Control Board

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October 14, 2015

VIA ELECTRONIC MAIL

Andrew Tauriainen, Esq.
State Water Resources Control Board
Office of Enforcement
1001 I Street, 16th Floor
Sacramento, CA 95814
andrew.tauriainen@waterboards.ca.gov

Re: Scheduling of Discovery in The West Side Irrigation District and Banta-Carbona Irrigation District Hearings

Dear Andrew:

We are in receipt of your October 13, 2015 email regarding the WSID BBID Discovery Requests. As you note, counsel for BBID, WSID (& Banta-Carbona ID/Patterson ID), SDWA and CDWA have requested to schedule depositions of each Prosecution Team witness starting next week. It is essential to begin discovery promptly in order to complete defense preparation in light of the timeline for the hearings which you acknowledge is "extraordinarily tight." Your email notes that our request raises two issues.

"First, the Prosecution Team asks that all Parties coordinate on potential discovery in order to avoid duplicative or overly burdensome requests". We have already agreed to do so.

"Second, the Prosecution Team remains unconvinced that depositions will be necessary in these actions given the extensive document production already underway and the pre-hearing witness statement submittals. In any event, conducting depositions prior to the witness statement submittals is highly inefficient given the possibility that some or all of the Parties may request additional depositions after reviewing the witness statements".

Your proposal is that depositions should take place, if at all, only after the witness statement and evidence submittal deadlines in each matter. This proposal is unsatisfactory. Without discovery WSID will not have sufficient information to prepare its witness statements; therefore, allowing discovery only after the witness statements have been submitted would severely prejudice WSID.

Andrew Tauriainen, Esq.
October 14, 2015
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It is frustrating that the Prosecution Team is not agreeable to cooperating with the parties to initiate discovery. As you know, deposition in these hearings is expressly allowed by Water Code §1100 providing: "The board or any party to a proceeding before it may, in any investigation or hearing, cause the deposition of witnesses residing within or without the state to be taken in the manner prescribed by law for depositions in civil actions in the superior courts of this state under Title 4 (commencing with Section 2016.010) of Part 4 of the Code of Civil Procedure." As described above, delay will only serve to prejudice the parties facing enforcement action. As a result, we will immediately be issuing deposition notices to proceed immediately with depositions in this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jeanne Zolezzi". The signature is written in a cursive, flowing style.

JEANNE M. ZOLEZZI
Attorney-at-Law

cc: Service List

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

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