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6
7 Attorneys for Petitioner/Plaintiff BYRON-
BETHANY IRRIGATION DISTRICT

8

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BEFORE THE

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CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

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12 ENFORCEMENT ACTION ENF01949
DRAFT CEASE AND DESIST ORDER
13 REGARDING UNAUTHORIZED
DIVERSIONS OR THREATENED
14 UNAUTHORIZED DIVERSIONS OF WATER
FROM OLD RIVER IN SAN JOAQUIN
15 COUNTY

16 In the Matter of ENFORCEMENT ACTION
ENF01951 – ADMINISTRATIVE CIVIL
17 LIABILITY COMPLAINT REGARDING
UNAUTHORIZED DIVERSION OF WATER
18 FROM THE INTAKE CHANNEL TO THE
BANKS PUMPING PLANT (FORMERLY
19 ITALIAN SLOUGH) IN CONTRA COSTA
COUNTY

SWRCB Enforcement Action
ENF01951 and ENF01949

DECLARATION OF MICHAEL E.
VERGARA SUPPORTING BYRON-
BETHANY IRRIGATION
DISTRICT'S MOTION TO STRIKE
THE DECLARATION OF MICHAEL
GEORGE IN SUPPORT OF
PROSECUTION TEAM'S
OPPOSITION TO BYRON-
BETHANY IRRIGATION
DISTRICT'S MOTION TO
DISMISS/DELEGATION

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I, Michael Vergara, declare:

1. I am an attorney at law licensed to practice before the courts of the State of California, and a shareholder with Somach Simmons & Dunn. I am the attorney with primary responsibility for this matter in my firm, and am familiar with all pleadings, filings, and correspondence related to it. The following matters are within my personal knowledge and, if called as a witness, I can competently testify thereto.

2. A true and correct copy of excerpt pages from the Deposition of John O'Hagan dated November 20, 2015, is attached as Exhibit A.

3. A true and correct copy of the correspondence from the State Water Resources Control Board (SWRCB) to Byron Bethany Irrigation District (BBID) dated November 20, 2015, is attached as Exhibit B.

4. A true and correct copy of the correspondence from SWRCB to BBID dated January 25, 2016, is attached as Exhibit C.

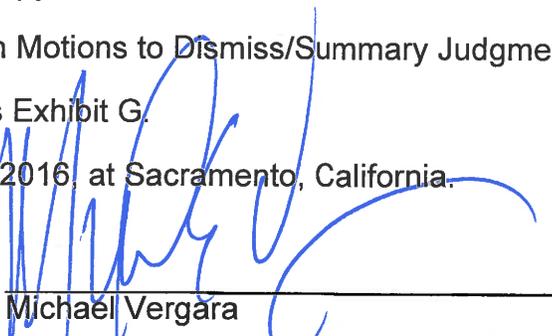
5. A true and correct of the correspondence from SWRCB to BBID dated January 27, 2016, is attached as Exhibit D.

6. A true and correct copy of the Declaration of Michael George In Support of Prosecution Team's Opposition to Byron-Bethany Irrigation District Motion to Dismiss/Delegation dated February 5, 2016, is attached as Exhibit E.

7. A true and correct copy of the Enforcement Action ENF01951-Administrative Civil Liability Complaint Regarding Unauthorized Diversions of Water From the Intake Channel to the Banks Pumping Plant (Formerly Italian Slough) In Contra Costa County, is attached as Exhibit F.

8. A true and correct copy of the Declaration of Andrew Tauriainen In Support of Prosecution Team's Opposition Motions to Dismiss/Summary Judgment, dated February 22, 2016, is attached as Exhibit G.

Executed on February 29, 2016, at Sacramento, California.



Michael Vergara

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

SOMACH SIMMONS & DUNN
A Professional Corporation

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<p><u>VIA ELECTRONIC MAIL</u></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><u>VIA ELECTRONIC MAIL</u></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><u>VIA ELECTRONIC MAIL</u></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><u>VIA ELECTRONIC MAIL</u></p> <p>California Department of Water Resources Robin McGinnis, Attorney P.O. Box 942836 Sacramento, CA 94236-0001 robin.mcginnis@water.ca.gov</p>
<p><u>VIA ELECTRONIC MAIL</u></p> <p>Richard Morat 2821 Berkshire Way Sacramento, CA 95864 rmorat@gmail.com</p>	<p><u>VIA ELECTRONIC MAIL</u></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>

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<u>VIA ELECTRONIC MAIL</u>	<u>VIA ELECTRONIC MAIL</u>
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>1 2 3 4 5 6 7</p>	<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>8 9 10 11 12 13</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 Moskowitz Tiedemann & Girad 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>14 15 16 17 18 19</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>
<p>20 21 22 23</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 Valerie C. Kincaid O'Laughlin & Paris LLP 2617 K Street, Suite 100 Sacramento, CA 95816 vkincaid@olaughlinparis.com</p>
<p>24 25 26</p>	<p>Byron-Bethany Irrigation District Daniel Kelly Somach Simmons & Dunn 500 Capitol Mall, Suite 1000 Sacramento, CA 95814 dkelly@somachlaw.com</p>	<p>California Department of Water Resources Robin McGinnis, Attorney P.O. Box 942836 Sacramento, CA 94236-0001 robin.mcginnis@water.ca.gov</p>

EXHIBIT A

BEFORE THE
CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

IN RE THE MATTERS OF:

SWRCB Enforcement Actions
ENFO1951; ENFO1949

WEST SIDE IRRIGATION
DISTRICT CEASE AND DESIST
ORDER HEARING,

and

BYRON-BETHANY IRRIGATION
DISTRICT ADMINISTRATIVE
CIVIL LIABILITY HEARING.

VIDEOTAPE DEPOSITION OF JOHN O'HAGAN
Volume II

November 20, 2015

Reported By: KATHRYN DAVIS, CSR No. 3808

kathryndavis & associates
deposition reporting

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APPEARANCES CONTINUED

For the Division of Water Rights:

SWRCB OFFICE OF ENFORCEMENT
By: CHRISTIAN CARRIGAN, Director
ANDREW TAURIAINEN, Senior Staff Counsel
Attorneys at Law
1101 I Street, 16th Floor
Sacramento, California 95814

For the California Department of Water Resources:

Department of Water Resources
Office of the Chief Counsel
By: TRIPP (JAMES) MIZELL
Attorney at Law
1416 Ninth Street, Room 1104
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For the State Water Contractors:

STATE WATER CONTRACTORS
By: STEFANIE MORRIS
Attorney at Law
1121 L Street, Suite 1050
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For the South Delta Water Agency:

HARRIS, PERISHO & RUIZ
By: S. DEAN RUIZ
Attorney at Law
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Videography Company:

SACRAMENTO LEGAL VIDEO COMPANY
Videographer: CANDACE KNIGHT
3500 Watt Avenue, Suite 400
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APPEARANCES CONTINUED

RICK GILMORE
BYRON-BETHANY IRRIGATION DISTRICT

NICHOLAS BONSIGNORE, P.E.
WAGNER & BONSIGNORE

TULLY & YOUNG
GREG YOUNG, P.E.

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76	Email chain dated January 21; John O'Hagan, Barbara Evoy, Kathy Mrowka, Jeffrey Yeazell one page.....	182
77	Email dated June 10, 2015 from Jeffrey Yeazell to Kathy Mrowka; 1 page.....	184

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79	California Central Valley Unimpaired Flow Data, Fourth Edition Draft, by Bay-Delta Office dated May 2007; 52 pages.....	189
80	Color Map entitled "Locations of Water Rights Used in Demand Analysis, San Joaquin River Watershed"; 1 page.....	193
81	SWRCB Report entitled, "Drought 77, Dry Year Program," dated January 1978 38 pages.....	202
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83	Email from Craig Wilson to John O'Hagan dated and email from Laura Cummings to Barbara Evoy dated July 21, 2015 attaching July 21, 2014 letter from Ms. Zolezzi; 9 pages....	214
84	Email from Jeanne Zolezzi to Barbara Evoy dated September 26, 2014; Email from Barbara Evoy to Jeanne Zolezzi dated October 8, 2014; 1 page.....	217
85	Color graph "2015 Combined Sacramento San Joaquin River Basin Senior Supply Demand.	224
86	Water Supervisors Report for Year 1931, Department of Public Works; three pages..	226
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DEPOSITION OF JOHN O'HAGAN, VOLUME II

1 the molecules of the stored water that may have
2 reached them.

3 Q Mr. O'Hagan, in the work that you did, did you
4 make any recommendations on enforcement this year?

5 MR. CARRIGAN: Overbroad.

6 THE WITNESS: I signed -- on behalf of the
7 Division of Water Rights, I'm delegated to sign
8 enforcement actions.

9 Q BY MR. KELLY: Do you know what that delegation
10 is under? You said you signed the enforcement actions
11 -- under delegation from whom?

12 A I am redelegated from the Deputy Director.
13 And under water code for the Administrative Civil
14 Liabilities and Cease and Desist Orders, that is
15 authorized by water code to the Executive Director.
16 He has delegated that down to the Deputy Director
17 for Water Rights, and then she has redelegated that
18 to me.

19 Q Do you know where that redelegation appears?

20 A On our redelegation documents.

21 Q When you say "redelegation documents," what do
22 you mean?

23 A The Board has redelegation documents.

24 Q Are those -- you said the Board. Did the Board
25 adopt a resolution or approve some type of redelegation

1 that I could find in the Board's records?

2 A We can supply you with a copy of the
3 delegation document and of the redelegation
4 document. Whether it is a Board order or an
5 Executive Director -- because the water code gives
6 him the authority, the Executive Director the
7 authority. He is doing the redelegation or he is
8 doing the delegation. And then it is being
9 redelegated again.

10 Q Okay. So did you make -- other than signing the
11 draft enforcement documents, did you make any decisions
12 related to enforcement?

13 MR. CARRIGAN: Overbroad. Vague.

14 TWE WITNESS: I make the decisions whether to
15 issue it or not.

16 Q BY MR. WELLY: And so in making those decisions,
17 was it your view that people were diverting illegally if
18 there was insufficient water available or were they
19 diverting illegally if they diverted after having
20 received the notice from the Board?

21 MR. CARRIGAN: Incomplete hypothetical. Calls
22 for a legal conclusion.

23 TWE WITNESS: The enforcement actions are based
24 on unauthorized diversions.

25 Q BY MR. WELLY: And what makes the diversion

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REPORTER'S CERTIFICATE

State of California)
) ss.
County of Sacramento)

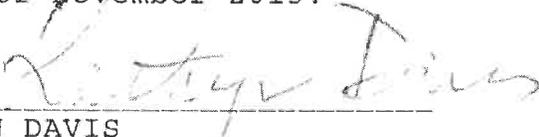
I certify that the witness in the foregoing deposition,

JOHN O'HAGAN,

was by me duly sworn to testify in the within-entitled cause; that said deposition was taken at the time and place therein named; that the testimony of said witness was reported by me, a duly Certified Shorthand Reporter Of the State of California authorized to administer oaths and affirmations, and said testimony was thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for either or any of the parties to said deposition, nor in any way interested in the outcome of the cause named in said deposition.

IN WITNESS WHEREOF, I have hereunto set my hand this 24th day of November 2015.



KATHRYN DAVIS
Certified Shorthand Reporter
Certificate No. 3808

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DISPOSITION OF ORIGINAL TRANSCRIPT

Date _____

Check One

_____ Signature waived.

_____ I certify that the witness was given the statutory allowable time within which to read and sign the deposition, and the witness failed to appear for such reading and signing.

_____ I certify that the witness has read and signed the deposition and has made any changes indicated therein.

By _____
KATHRYN DAVIS & ASSOCIATES

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DEPOSITION OF JOHN O'HAGAN VOLUME II

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KATHRYN DAVIS & ASSOCIATES
Certified Shorthand Reporters
555 University Avenue, Suite 160
Sacramento, California 95825
(916) 567-4211

November 24, 2015

State Water Resources Control Board
Office of Enforcement
Attn: CHRISTIAN CARRIGAN
1001 I Street, 16th Floor
Sacramento, California 95814

Re: West Side Irrigation District Cease and Desist
Order & Byron-Bethany Irrigation District Civil Hearing

Date Taken: November 20, 2015

Dear Mr. John O'Hagan:

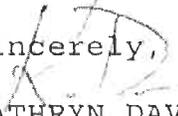
Your deposition transcript is now available for review
And signature, and will be available for the next 30
days. This review is optional. An appointment is
required to review your transcript. Please bring this
letter with you.

You may wish to discuss with your attorney whether
he/she requires that it be read, corrected, and signed,
before it is filed with the Court.

If you are represented by an attorney, you may read his
or her copy of the transcript. If you read your
attorney's copy of the transcript, please send us a
photocopy of the Signature Line and Deponent's Change
Sheet.

If you choose not to read your deposition, please sign
here and return this letter to our office.

Signature Date

Sincerely,

KATHRYN DAVIS, CSR No. 3808

cc: Ms. Spaletta; Mr. Kelly; Ms. Zolezzi; Ms. Leeper;
Mr. Ruiz; Mr. O'Laughlin; Mr. Tauriainen; Ms. McGinnis;
Ms. Morris; Mr. Knapp; Mr. Donlon

EXHIBIT B



From: **Tauriainen, Andrew@Waterboards** Andrew.Tauriainen@waterboards.ca.gov
 Subject: BBID ACLC Hearing WSID Draft CDO Hearing - Delegations of Authority
 Date: November 20, 2015 at 12:19 PM
 To: Dan Kelly (dkelly@somachlaw.com) dkelly@somachlaw.com, Jeanne Zolezzi (jzolezzi@herumcrabtree.com, kharrigfeld@herumcrabtree.com, Janelle Krattiger (jkrattiger@herumcrabtree.com, Jonathan Knapp (jonathan.knapp@sfgov.org) jonathan.knapp@sfgov.org, Rob Donlan (red@eslawfirm.com, 'Jennifer Spaletta' (jennifer@spalettalaw.com) jennifer@spalettalaw.com, ngmpics@pacbell.net, McGinnis, Robin C.@DWR (Robin.McGinnis@water.ca.gov, "Dante Nomellini, Jr." (dantejr@pacbell.net) dantejr@pacbell.net, rjmorat@gmail.com, Valerie Kincaid (vkincaid@olaughlinparis.com, Linda Wood (lwood@olaughlinparis.com) lwood@olaughlinparis.com, Herrick, John @aol.com (jherlaw@aol.com, Dean Ruiz (dean@hprlaw.net) dean@hprlaw.net, Stefanie Morris (smorris@swc.org) smorris@swc.org, O'Hanlon, Daniel (dohanlon@kmtg.com, Akroyd, Rebecca@KMTG (rakroyd@kmtg.com, Philip Williams (pwilliams@westlandswater.org) pwilliams@westlandswater.org, Unit, Wr_Hearing@Waterboards (Wr_Hearing.Unit@waterboards.ca.gov
 Cc: Carrigan, Cris@Waterboards (Cris.Carrigan@waterboards.ca.gov, O'Hagan, John@Waterboards (John.O'Hagan@waterboards.ca.gov

Attached please find the delegations of authority inquired about by BBID's counsel this morning.

Andrew Tauriainen, Attorney III
 State Water Resources Control Board
 Office of Enforcement
 1001 I Street, 16th Floor
 Sacramento, CA 95814
 tel: (916) 341-5445
 fax: (916)341-5896
atauriainen@waterboards.ca.gov

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Redelegation of Authorities ...070612.pdf



rs2012_0029.pdf



EDMUND G. BROWN JR.
GOVERNOR

MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

State Water Resources Control Board

MEMORANDUM

TO: All Water Rights Staff

FROM:

Barbara Evoy, Deputy Director
DIVISION OF WATER RIGHTS

DATE: July 6, 2012

SUBJECT: REDELEGATION OF AUTHORITIES PURSUANT TO RESOLUTION NO. 2012-0029

On June 5, 2012, the State Water Resources Control Board (State Water Board or Board) adopted Resolution No. 2012-0029. Pursuant to Resolution No. 2012-0029, the State Water Board delegated to the State Water Board's Deputy Director for Water Rights (Deputy Director) certain authorities that may be redelegated. This memorandum specifies those authorities which are redelegated by the Deputy Director. For your convenience, this redelegation memorandum contains the original delegations to individual Board members and to the Deputy Director, including various provisions where no redelegation exists. Where there is a redelegation, it follows the original delegation and is listed in bold italics. Except where specifically stated otherwise, all delegated authorities of an immediate superior are redelegated to staff appointed to act in the absence of that immediate superior or where that immediate superior is recused.

DELEGATIONS TO BOARD MEMBERS INDIVIDUALLY

- 2.1. Act on an application or request for renewal of a conditional temporary water right permit pursuant to chapter 6.5 (commencing with section 1425) of part 2 of division 2 of the Water Code. This delegation includes the authority to:
 - 2.1.1. Hold a hearing on any application or request for renewal made pursuant to chapter 6.5.
 - 2.1.2. Make the findings required by chapter 6.5 as conditions precedent to the issuance or renewal of a temporary permit.
 - 2.1.3. Make any findings required by the California Environmental Quality Act (CEQA), Public Resources Code section 21000 et seq.
- 2.2. Act on a petition or request for renewal of a conditional temporary urgency change pursuant to chapter 6.6 (commencing with section 1435) of part 2 of division 2 of the Water Code. This delegation includes the authority to:

- 2.2.1. Hold a hearing on any petition or request for renewal made pursuant to chapter 6.6.
- 2.2.2. Make the findings required by chapter 6.6 as conditions precedent to the issuance or renewal of a temporary change order.
- 2.2.3. Make any findings required by CEQA as conditions precedent to the issuance or renewal of a temporary change order.
- 2.3. During the trial review period, act on a request for review by an applicant or protestant of Division staff determinations regarding application and petition processing under the Policy for Maintaining Flows in the Northern California Coastal Streams (Policy), prior to final Board action. The scope of issues subject to such review shall be determined by the Division pursuant to Section 3.4.3 of the Policy.

DELEGATIONS TO THE DEPUTY DIRECTOR FOR WATER RIGHTS

- 3. That the State Water Board delegates the authority herein to the Deputy Director with the following direction:
 - 3.1. The enumeration of delegated authorities in this resolution shall not be interpreted as revoking authorities already delegated, or hereafter delegated, to the Executive Director or to the Deputy Director, from the State Water Board or the Executive Director. ***The Deputy Director redelegates to the staff as specified below in bold italics, the authority to take the actions listed in subsections 3.1 through 4.14.1 of this document.***
 - 3.2. Unless otherwise specified in this resolution, the authorities delegated to the Deputy Director under this resolution may not be redelegated except in the absence of the Deputy Director. The Deputy Director may delegate to a senior member of the Division staff the authority to act on his or her behalf when the Deputy Director is absent or recused. Where this resolution authorizes the redelegation of authority, and the Deputy Director makes such redelegation, the staff member to whom the authority has been redelegated may further delegate to a member of the Division staff the ability to act on his or her behalf when the Division staff member is absent or recused, unless the Deputy Director directs otherwise.
 - 3.3. For purposes of this resolution, and for any purposes of any other resolution, decision, or order assigning or delegating responsibility to Chief of the Division of Water Rights, that reference means the Deputy Director for Water Rights, Assistant Deputy Director for Water Rights, or other officer or employee of the State Water Board who is responsible for managing the activities of the Division of Water Rights.
 - 3.4. The Deputy Director shall administer and implement the delegation under this resolution as follows:
 - 3.4.1. Maintain the delegation, including any appendices, redelegation memoranda, and subsequent resolutions that add to, amend, or revoke the authorities identified therein.

- 3.4.2. Every two years, review the authority delegated herein and recommend to the State Water Board whether or not to revise the delegation.
 - 3.4.3. In exercising the authority delegated herein, and without restricting the authority specified, bring the following matters to the attention of the members of the State Water Board by appropriate communication: ***Persons exercising authority redelegated by the Deputy Director are directed to bring the following matters to the attention of the Deputy Director:***
 - 3.4.3.1. Matters of a unique or unusual nature;
 - 3.4.3.2. Matters that appear to depart from the policies of the State Water Board;
 - 3.4.3.3. Matters involving significant policy questions;
 - 3.4.3.4. Highly controversial matters;
 - 3.4.3.5. Matters that involve a substantial risk of litigation;
 - 3.4.3.6. Any matter that a Board Member requests to be brought to the attention of the State Water Board; and
 - 3.4.3.7. Any matter that, in the judgment of the Deputy Director, should be brought to the attention of the State Water Board.
 - 3.4.3.8. ***Any proposed term or condition developed by outside parties in order to settle a protest which the outside parties request to be included in a permit, license or order.***
4. That the State Water Board delegates to the Deputy Director the authority to take the following actions:

General Administration.

- 4.1.1. Conduct and supervise the general administrative activities of the Division, including preparing and signing documents, transmitting documents adopted or approved by the State Water Board, and maintaining custody of records. This general administrative authority may be redelegated. ***This authority is redelegated to the Assistant Deputy Directors, all Section Managers, and all Unit Seniors. This authority is redelegated to the staff level for routine correspondence within their areas of expertise at the discretion and direction of their supervisor. In addition, authority for maintaining custody of records is delegated to the Analyst(s) in responsible charge of the records of the Division.***
- 4.1.2. Issue subpoenas for the attendance of witnesses and the introduction of evidence before the State Water Board with respect to all proceedings for which the Division has program responsibility. This authority may be redelegated. ***This authority is redelegated to the Assistant Deputy Directors in the absence of the Deputy Director.***

- 4.1.3. Amend or modify a decision or order to correct any obvious typographical or clerical error or oversight, pursuant to Water Code section 1124. This authority may be redelegated. ***This authority is redelegated to the Assistant Deputy Directors within each Assistant Deputy Director's area of authority and to the Section Managers within each Section Manager's area of authority.***
- 4.1.4. Develop and maintain a list of standard permit terms in accordance with California Code of Regulations, title 23, section 780. This authority may be redelegated. ***This authority is redelegated to the Assistant Deputy Director of the Permitting and Enforcement Branch in the absence of the Deputy Director.***
- 4.1.5. Request the Attorney General to institute appropriate proceedings in the superior court in accordance with Water Code section 1052 or 1845.
- 4.1.6. Assess and collect fees in accordance with chapter 8 (commencing with section 1525) of part 2 of division 2 of the Water Code or section 13160.1 of the Water Code. This authority may be redelegated. ***The authority to assess and collect annual fees is redelegated to the Assistant Deputy Directors in the absence of the Deputy Director. The authority to assess and collect filing fees is redelegated to the Assistant Deputy Directors within each Assistant Deputy Director's area of authority and to Section Managers within each Section Manager's area of authority in the absence of the applicable Assistant Deputy Director. The authority to request that the Board of Equalization cancel a liability which has expired is delegated to the Water Rights Fee Coordinator.***
- 4.1.7. Cancel an application, registration, petition, request, or claim for failure to pay a fee when due pursuant to Water Code section 1535, subdivision (b).) This delegation may be redelegated. ***This authority is redelegated to the Assistant Deputy Director of the Permitting and Enforcement Branch. The authority to cancel a registration, request, or a statement of water diversion and use claim for failure to pay a filing fee when due is also delegated to the Manager of the Permitting and Licensing Section, all Unit Seniors in the Permitting and Licensing Section and to the Water Right Fee Coordinator.***
- 4.1.8. Amend or modify water quality control plans adopted by the State Water Board to correct any obvious typographical or clerical error or oversight, or to make clarifying changes requested by the Office of Administrative Law, after notice to the Executive Director.
- 4.2. Appropriation of Water.
 - 4.2.1. Prepare and sign notices of applications to appropriate water. This authority may be redelegated. ***This authority is redelegated to the Assistant Deputy Directors, the Managers of the Permitting and Licensing Section and of the Hearings and Special Projects Section, and all Unit Seniors in the Permitting and Licensing Section.***
 - 4.2.2. Act on a request by an applicant for an extension of time to complete an application to appropriate water in accordance with California Code of Regulations, title 23, section 681. This authority may be redelegated. ***This authority is redelegated to the Assistant Deputy Director of the Permitting and Enforcement Branch, the***

Manager of the Permitting and Licensing Section, and all Unit Seniors in the Permitting and Licensing Section.

- 4.2.3. Request additional information from an applicant or petitioner in accordance with Water Code sections 1275, 1334, 1701.3, or 1703.5. This authority may be redelegated. ***This authority is redelegated to the Assistant Deputy Directors, the Managers of the Permitting and Enforcement Sections and the Hearings and Special Programs Section, the Unit Seniors in the Permitting and Licensing Section and to the Senior of the Hearings Unit.***
- 4.2.4. Act on applications and change petitions pursuant to Water Code sections 1340 et seq., and 1701 et seq. after proceedings in accordance with Water Code sections 1345-1348 or 1704.1-1704.4 or in proceedings where no hearing is required in accordance with Water Code section 1351 or 1704, subdivision (c). In the case of change petitions, this authority includes the authority to issue an amended permit or license if the change petition is approved. This authority may be redelegated. ***This authority is redelegated to the Assistant Deputy Directors and the Section Managers of the Permitting and Enforcement Branch and the Hearings and Special Programs Section.***
- 4.2.5. Act on a request to allow additional time to submit information pursuant to Water Code section 1276 or 1701.4. This authority may be redelegated. ***This authority is redelegated to the Assistant Deputy Directors and the Section Managers of the Permitting and Enforcement Branch and the Section Manager of the Hearings and Special Programs Section.***
- 4.2.6. Act on a request to approve a compliance plan, monitoring plan, conservation plan, and other programs, plans, reports, or evaluations required to be submitted to the State Water Board as a condition of a permit, license, or enforcement order. This authority may be redelegated. ***This authority is redelegated to the Assistant Deputy Directors and Program and the Section Managers of the Permitting and Enforcement Section and the Hearings and Special Programs Sections. If the program, plan, report or evaluation involves engineering work, and the Section Manager is not a registered engineer, then the Section Manager must obtain concurrence on the sections of the program, plan, report or evaluation that involve engineering work from a registered State Water Board engineer.***
- 4.2.7. Act on a request for an extension of time to complete construction or beneficial use of water under a permit in accordance with California Code of Regulations, title 23, sections 840-848, provided that an extension may be granted only if (a) there are no competing projects that would be adversely affected; (b) there are no outstanding protests; and (c) either: (1) the extension is for ten years or less and the period of the extension in combination with all extensions previously granted under delegated authority does not exceed 15 years; or (2) the extension is for a municipality, the period of extension in combination with all extensions previously granted under delegated authority does not exceed 25 years, and the Deputy Director finds that the time extension is necessary to serve development allowable under the applicable land-use plan for the place of use identified in the permit. This includes the authority to issue an amended permit if the extension of time is approved, consistent with the order approving the extension of time. This authority

may be redelegated to the Assistant Deputy Directors. ***This authority is redelegated to the Assistant Deputy Directors.***

- 4.2.8. Act on a request for an extension of time to meet a deadline, other than the time to complete construction or put water to beneficial use, contained in a permit if no Board Member objects after being informed by appropriate communication. This authority may be redelegated. ***This authority is redelegated to the Assistant Deputy Directors and to each Section Manager, but may be exercised only upon notification by the Deputy Director that no Board Member objects.***
- 4.2.9. Issue permits or licenses, amendments thereto, change orders, and extension orders after the State Water Board issues a decision or order. This authority may be redelegated to the Assistant Deputy Directors. ***This authority is redelegated to the Assistant Deputy Directors.***
- 4.2.10. Prepare and sign licenses when the terms and conditions have been accepted by the permittee. This authority may be redelegated. ***This authority is redelegated to the Assistant Deputy Directors and to the Section Managers of the Permitting and Enforcement Branch and to the Section Manager of the Hearings and Special Programs Section.***
- 4.2.11. Correct the description in an application, permit, or license of the point of diversion, place of use, purpose of use, or name of source if (a) there is no physical change in project facilities already constructed or the current use of water, or no change in the intent of the applicant or permittee regarding the proposed location of project facilities or use of water, and (b) no one could have been misled by the original description. This authority may be redelegated. ***This authority is redelegated to the Assistant Deputy Directors and to the Section Managers of the Permitting and Enforcement Branch and the Hearings and Special Programs Section.***
- 4.2.12. Make changes to cover incidental uses of a reservoir in accordance with California Code of Regulations, title 23, section 798. This authority may be redelegated. ***This authority is redelegated to the Assistant Deputy Director and the Section Managers of the Permitting and Enforcement Branch.***
- 4.2.13. Issue separate permits or licenses or act on a request to split applications to replace an existing application, permit or license when the place of use has been divided into two or more ownerships and each owner succeeds to a separate interest in the permit or license. Cancel or revoke the existing application, permit or license provided that no objection is received from any of the owners. This authority may be redelegated. ***This authority is redelegated to the Assistant Deputy Director of the Permitting and Enforcement Section and to the Section Managers of the Permitting and Enforcement Branch.***
- 4.2.14. Act on an application or a request for renewal of a temporary water right permit pursuant to chapter 6.5 (commencing with section 1425) of part 2 of division 2 of the Water Code if there are no outstanding objections. This authority may be redelegated to the Assistant Deputy Directors in the absence of the Deputy Director. ***This authority is redelegated to the Assistant Deputy Directors.***

4.3. Protests.

- 4.3.1. Request information from a protestant in accordance with Water Code sections 1332, 1334, 1703.3, or 1703.5. This authority may be redelegated. ***This authority is redelegated to the Assistant Deputy Directors, to the Section Managers in the Permitting and Licensing Section, to the Section Manager of the Hearings and Special Programs Section, and to the Unit Seniors in the Permitting and Licensing Section.***
 - 4.3.2. Act on requests to extend time for filing protests and answers to protests and approve a request upon finding that good cause has been shown. This authority may be redelegated. ***This authority is redelegated to the Assistant Deputy Directors and to the Section Managers in the Permitting and Enforcement Branch and the Hearings and Special Programs Section.***
 - 4.3.3. Cancel a protest in accordance with Water Code section 1335 or 1703.6. This authority may be redelegated to the Assistant Deputy Directors. ***This authority is redelegated to the Assistant Deputy Directors.***
 - 4.3.4. Reject protests which do not substantially comply with the requirements of the Water Code or title 23 of the California Code of Regulations. This authority may be redelegated. ***This authority is redelegated to the Assistant Deputy Directors and to the Managers of the Permitting and Licensing Section and the Hearings and Special Programs Section if the protest does not comply with the requirements of Water Code sections 1331(a), 1331(b), or 1331(e).***
- 4.4. Transfers or Temporary Changes.
- 4.4.1. Act on a petition for a temporary urgency change, or a request for renewal of a temporary change order, pursuant to chapter 6.6 (commencing with section 1435) of part 2 of division 2 of the Water Code. If the State Water Board receives any objections to a petition for a temporary urgency change, the Deputy Director shall refer the matter to the Executive Director for action under section 2.2. This authority may be redelegated to the Assistant Deputy Directors in the absence of the Deputy Director. ***This authority is redelegated to the Assistant Deputy Directors in the absence of the Deputy Director.***
 - 4.4.2. Act on a petition for a temporary change due to a transfer of water or water rights in accordance with Water Code sections 1725-1732 if the State Water Board does not hold a hearing. This authority may be redelegated to the Assistant Deputy Directors in the absence of the Deputy Director. ***This authority is redelegated to the Assistant Deputy Directors in the absence of the Deputy Director.***
 - 4.4.3. Act on a petition for a long-term transfer of water or water rights involving a change of point of diversion, place of use, or purpose of use in accordance with Water Code sections 1735-1737, following notice of the proposed transfer, if the State Water Board does not hold a hearing. This authority may be redelegated to the Assistant Deputy Directors in the absence of the Deputy Director. ***This authority is redelegated to the Assistant Deputy Directors in the absence of the Deputy Director.***
- 4.5. Cancellation or Revocation.

- 4.5.1. Issue a notice of proposed cancellation of an application pursuant to California Code of Regulations, title 23, section 845, a notice of proposed revocation of a permit pursuant to Water Code section 1410 et seq., or a notice of proposed revocation of a license pursuant to Water Code section 1675 et seq.
- 4.5.2. Prepare and sign orders canceling or revoking an application, petition, permit, or license to appropriate water, under any of the following circumstances:
 - 4.5.2.1. When requested by the applicant, petitioner, permittee, or licensee. This authority may be redelegated. ***This authority is redelegated to the Assistant Deputy Directors, and to all Section Managers and Unit Seniors in the Permitting, Enforcement, and Hearings and Special Programs Sections when all rights to hearing and reconsideration have been waived in writing by the applicant, petitioner, permittee, or licensee.***
 - 4.5.2.2. When an applicant or petitioner fails to timely provide information in accordance with Water Code sections 1276, 1335, 1701.4, or 1703.6, and does not show good cause for additional time to submit the requested information under Water Code section 1276 or 1701.4. This authority may be redelegated to the Assistant Deputy Directors. ***This authority is redelegated to the Assistant Deputy Directors.***
 - 4.5.2.3. When the application or petition is defective or incomplete and has not been perfected within the time allowed for that purpose, and no request for extension of time is filed. This authority may be redelegated to the Assistant Deputy Directors. ***This authority is redelegated to the Assistant Deputy Directors.***
 - 4.5.2.4. When the applicant or petitioner fails to submit complete or adequate information in accordance with Government Code section 65956. This authority may be redelegated to the Assistant Deputy Directors. ***This authority is redelegated to the Assistant Deputy Directors.***
 - 4.5.2.5. When fees have not been paid within the time required by law. This authority may be redelegated to the Assistant Deputy Directors. ***This authority is redelegated to the Assistant Deputy Directors.***
 - 4.5.2.6. When the applicant or petitioner fails to file an affidavit of posting or publication of notice as required by law. This authority may be redelegated to the Assistant Deputy Directors. ***This authority is redelegated to the Assistant Deputy Directors.***
 - 4.5.2.7. When an application is conditionally approved and the applicant fails to comply with the conditions or to inform the State Water Board that it has complied, within a reasonable time or the time provided, pursuant to California Code of Regulations, title 23, section 845, except when the applicant requests a hearing after notice of the proposed cancellation. This authority may be redelegated to the Assistant Deputy Directors. ***This authority is redelegated to the Assistant Deputy Directors.***

- 4.5.2.8. When a permit is issued subject to continuing compliance with one or more specified conditions and the permittee fails to certify compliance with the conditions, or it is discovered that the permittee is not complying with a specified condition, pursuant to California Code of Regulations, title 23, section 845, except when the permittee requests a hearing after notice of proposed revocation. This authority may be redelegated to the Assistant Deputy Directors. ***This authority is redelegated to the Assistant Deputy Directors.***
- 4.5.2.9. After notice of proposed revocation pursuant to Water Code section 1410 or 1675 has been sent to the permittee or licensee and no request for hearing has been received. This authority may be redelegated. ***This authority is redelegated to the Assistant Deputy Director of and the Section Managers in the Permitting and Enforcement Branch.***
- 4.5.2.10. When the stream has been declared fully appropriated in accordance with Water Code section 1206, subdivision (a), Board Order WR 98-08, and any orders that supersede or modify Order WR 98-08. This authority may be redelegated to the Assistant Deputy Directors. ***This authority is redelegated to the Assistant Deputy Directors.***
- 4.5.3. Act on requests to set aside the revocation of a permit or license, in accordance with Water Code section 1410.2 or 1675.2.
- 4.6. Small Domestic Use, Small Irrigation Use or Livestock Stockpond Use.
- 4.6.1. Act on claims for stockpond certificates and registrations (including renewal of registrations) for small domestic use, small irrigation use, or livestock stockpond use in accordance with Water Code sections 1226 et seq. and 1228 et seq., including revoking a certificate or registration pursuant to Water Code section 1226.4 or 1228.4, except that the Deputy Director is not authorized to revoke a certificate or registration if a notice of proposed revocation has been sent to the certificate holder or registrant and a request for hearing has been received. This authority may be redelegated. ***The authority to act on registrations under Water Code Article 2.7, section 1228 et seq., is redelegated to the Assistant Deputy Director of the Permitting and Enforcement Branch. The authority to issue and renew certificates of registration is redelegated to the Section Manager and Unit Seniors of the Permitting and Licensing Section. The authority to issue a notice of revocation of a stockpond certificate or registration is redelegated to the Assistant Deputy Director and Section Managers of the Permitting and Enforcement Branch. The authority to confirm revocation of a registration by operation of law is redelegated to the Section Managers and Unit Seniors of the Permitting and Enforcement Branch.***
- 4.6.2. Establish and revise a list of general conditions to be applied to small domestic use or livestock stockpond use registrations as authorized by Water Code section 1228.6, and to small irrigation use registrations as authorized by Water Code sections 1228.6 and 1229. This authority may be redelegated. ***This authority is***

redelegated to the Assistant Deputy Director of the Permitting and Enforcement Branch.

4.7. Determination of Rights.

- 4.7.1. Prepare and announce draft reports of referee in accordance with Water Code section 2010 et seq.
- 4.7.2. Apportion the State Water Board's expenses among the parties, request the court to order interim or partial payment of expenses, and take steps necessary to ensure collection of the expenses in accordance with Water Code section 2040 et seq.
- 4.7.3. Perform the following duties pursuant to "Order of Appointment of California State Water Resources Control Board as Special Master," issued by the United States District Court for the District of Nevada, on April 9, 1990, in *United States of America v. Walker River Irrigation District*, In Equity No. C-125 ("the Walker River Action"), and the accompanying Administrative Rules and Regulations (as amended by "Final Order Pursuant to Stipulation," issued on June 3, 1996):
 - 4.7.3.1. Accept, or reject as defective or incomplete, compliance applications (as defined in the Administrative Rules and Regulations) and applications to change point of diversion, manner of use, or place of use of water in the exercise in California of water rights identified in the decree in the Walker River Action. This authority may be redelegated to the Assistant Deputy Directors. ***This authority is redelegated to the Assistant Deputy Directors.***
 - 4.7.3.2. Process applications in the manner required by the Order of Appointment, including publishing and mailing notices, acting on protests, conducting a field investigation, preparing and announcing the draft report of Special Master, accepting objections to the draft report and, if there are no issues that require a hearing before the State Water Board, adopting the final report of Special Master. This authority may be redelegated to the Assistant Deputy Directors. ***This authority is redelegated to the Assistant Deputy Directors.***
 - 4.7.3.3. Following final action by the State Water Board to approve or reject the change application, prepare a statement of total expense incurred by the State Water Board in conducting the proceeding, together with an equitable apportionment of such total expense among the parties to the proceeding. This authority may be redelegated to the Assistant Deputy Directors. ***This authority is redelegated to the Assistant Deputy Directors.***
 - 4.7.3.4. Prepare, announce, serve, and file the Report of Special Master, including therein the statement of total expense and the equitable apportionment thereof. This authority may be redelegated to the Assistant Deputy Directors.

- 4.7.3.5. Prepare and transmit to the court a certified copy of the record of proceeding for judicial review of the Report of Special Master. This authority may be redelegated to the Assistant Deputy Directors.

4.8. Statutory Adjudications.

- 4.8.1. Prepare, issue, cause to be published, and record notices of statutory adjudication proceedings in accordance with Water Code sections 2526-2529. This authority may be redelegated. ***This authority is redelegated to the Assistant Deputy Directors and to the Section Managers of the Permitting and Enforcement Branch and of the Hearings and Special Programs Section.***
- 4.8.2. Conduct investigations of stream systems in accordance with Water Code section 2550 et seq., including providing notice of investigations, conducting field investigations, and determining facts. This authority may be redelegated. ***This authority is redelegated to the Assistant Deputy Directors and to the Section Managers of the Permitting and Enforcement Branch and of the Hearings and Special Programs Section.***
- 4.8.3. Issue any notices, copies of factual determinations, reports, objections, orders, or other correspondence or documents authorized by chapter 3 (commencing with section 2500) of part 3 of division 2 of the Water Code. This authority may be redelegated. ***This authority is redelegated to the Assistant Deputy Directors and to the Section Managers of the Permitting and Enforcement Branch and of the Hearings and Special Programs Section.***
- 4.8.4. Prepare and issue a notice of inspection of proofs and evidence in accordance with Water Code section 2625 et seq. This authority may be redelegated. ***This authority is redelegated to the Assistant Deputy Directors and to the Section Managers of the Permitting and Enforcement Branch and of the Hearings and Special Programs Section.***
- 4.8.5. Prepare and issue the report, preliminary order of determination, and notice in accordance with Water Code sections 2600 -2604.
- 4.8.6. Take actions to file the final State Water Board order with the superior court in accordance with Water Code sections 2750-2756, including filing the required documents and communicating with the superior court, and mailing and causing the order to be published.
- 4.8.7. Furnish copies of the decree or supplemental decree and notice of entry to water right claimants in accordance with Water Code sections 2825-2826.
- 4.8.8. Take actions to apportion and collect the State Water Board's expenses and costs against the parties to the proceeding in accordance with Water Code section 2850 et seq., including mailing statements of expense, ordering interim or partial payments, and taking steps necessary to ensure collection of the expenses.

4.9. Enforcement of Water Rights and Complaints.

- 4.9.1. Issue a notice of cease and desist order and, when a hearing has not been timely requested, issue a cease and desist order in accordance with Water Code section 1831 et seq. This authority may be redelegated to the Assistant Deputy Directors. ***This authority is redelegated to the Assistant Deputy Director of the Permitting and Enforcement Branch.***
- 4.9.2. Issue an order imposing administrative civil liability when a complaint has been issued and no hearing has been requested within the period provided under Water Code section 1055. This authority may be redelegated to the Assistant Deputy Directors. ***This authority is redelegated to the Assistant Deputy Director of the Permitting and Enforcement Branch.***
- 4.9.3. Take actions to collect unpaid fees and initiate subsequent enforcement actions, including revocation of permits or licenses, pursuant to Water Code section 1535 et seq. This authority may be redelegated to the Assistant Deputy Directors. ***This authority is redelegated to the Assistant Deputy Director of the Permitting and Enforcement Branch.***
- 4.9.4. Dismiss an incomplete complaint filed pursuant to California Code of Regulations, title 23, section 820. This authority may be redelegated. ***This authority is redelegated to the Assistant Deputy Director of the Permitting and Enforcement Branch and to the Manager and Unit Seniors of the Enforcement Section.***
- 4.9.5. Dismiss a complaint filed under California Code of Regulations, title 23, sections 820 or 856, or under the public trust doctrine, where: (a) the complainant does not show good cause for the State Water Board to investigate an allegation of misuse of water; (b) an investigation results in the determination that no violation or misuse of water has occurred; (c) the alleged violation or misuse of water that forms the basis of the complaint has been remedied; or (d) the State Water Board declines to exercise its discretion to investigate or prosecute an allegation that a violation has occurred. This authority may be redelegated to the Assistant Deputy Directors. ***This authority is redelegated to the Assistant Deputy Director of the Permitting and Enforcement Branch and to the Manager of the Enforcement Section when both the complainant and the respondent have been informed that an investigation (a) has resulted in the preliminary determination that no violation or misuse of water has occurred or (b) that the alleged violation or misuse of water that forms the basis of the complaint has been remedied, and the complainant has not submitted additional information to support the alleged violation or misuse of water within the time provided.***

4.10. California Environmental Quality Act.

- 4.10.1. Take actions to comply with CEQA for all projects carried out or approved by the State Water Board in connection with the administration of the water right program to the extent authorized under section 15025 of the State CEQA Guidelines (Cal. Code Regs., tit. 14, § 15000 et seq.). This authority shall be exercised in conformity with the State CEQA Guidelines and the State Water Board's regulations. This authority may be redelegated. ***The authority to enter into or decline to enter into a memorandum of understanding for the preparation of CEQA documents is redelegated to the Assistant Deputy Directors and to the***

Section Managers of the Permitting, Enforcement, Hearings and Special Programs, and Water Quality Certification and Public Trust Sections. The authority to issue Notices of Preparation and Notices of Exemption is redelegated to the Assistant Deputy Directors and to the Section Managers of the Permitting, Enforcement, Hearings and Special Programs, and Water Quality Certification and Public Trust Sections. The authority to prepare responses to comments on CEQA documents and to approve an Initial Study for CEQA documents within their program area is redelegated to all Section Managers and Unit Seniors. Where this memorandum or a future action by the Deputy Director redelegates the authority over an action that requires CEQA compliance, the authority to prepare a negative declaration or Environmental Impact Report for that action is redelegated to the person with authority over the underlying activity.

4.11. Certification of Water Right.

4.11.1. In response to a request for certification made pursuant to Public Resources Code section 26013 or Public Utilities Code section 2821, certify or decline to certify that:

4.11.1.1. The State Water Board has issued a water right permit for the appropriation of water for the operation of a hydroelectric facility; or

4.11.1.2. In the opinion of the State Water Board, the energy producer possesses riparian or other water rights that authorize the operation of a hydroelectric facility.

4.12. Water Quality.

4.12.2. Enter into or decline to enter into collaborative communication protocol agreements for licensing and relicensing of hydroelectric projects pursuant to the Federal Energy Regulatory Commission's regulation at 18 Code of Federal Regulations part 4.34(i)(3)(ii). In recognition of the State Water Board's adjudicative responsibilities, and the requirement that it avoid bias, prejudice, or interest in contested matters subject to its approval, this delegation applies only to agreements that do not bind or commit the State Water Board to approve or disapprove an application for water quality certification, water right permit application, or petition for water right change order, or any term or condition of such an approval. This authority may be redelegated to the Assistant Deputy Directors. ***This authority is redelegated to the Assistant Deputy Directors.***

4.12.3. Establish monitoring, inspection, entry, reporting and recordkeeping requirements and require other information as may reasonably be required, pursuant to Water Code section 13383, for activities subject to water quality certification under section 401 of the Clean Water Act that involve the diversion of water for beneficial use. This authority may be redelegated. ***This authority is redelegated to the Assistant Deputy Directors.***

4.12.4. Request the Attorney General to institute appropriate proceedings in the superior court in accordance with Water Code sections 13350, 13385 or 13386, if the violation relates to water quality certification of an activity involving the diversion of water for beneficial use.

4.13. Groundwater Extraction Recordation Program.

4.13.1. Designate local agencies, in accordance with the requirements of Water Code section 5009, to administer the groundwater extraction recordation program. This authority may be redelegated to the Assistant Deputy Director. ***This authority is redelegated to the Assistant Deputy Directors.***

4.14. Policy for Maintaining Instream Flows in Northern California Coastal Streams

4.14.1. Implement the Policy for Maintaining Instream Flows in Northern California Coastal Streams (Policy) by approving, denying approval, or retracting approval of watershed group project charters and diversion management plans; making the preliminary determinations necessary to process applications, petitions and registrations pursuant to the policy; and approving or denying exceptions to policy provisions as outlined in the policy, except case-by-case exceptions to policy provisions sought pursuant to section 9.0 of the policy. This authority does not include the authority to act on the merits of applications or petitions where there are unresolved protests, or any other authority not subject to delegation. This authority may be redelegated. ***This authority is redelegated to the Assistant Deputy Director of the Permitting and Enforcement Branch and to the Section Manager of the Permitting and Licensing Section.***

EXHIBIT C

From: **Tauriainen, Andrew@Waterboards** Andrew.Tauriainen@waterboards.ca.gov

Subject: RE: BBID ACLC Hearing WSID Draft CDO Hearing - Delegations of Authority

Date: January 25, 2016 at 12:00 PM

To: Dan Kelly (dkelly@somachlaw.com) dkelly@somachlaw.com, Jeanne Zolezzi (jzolezzi@herumcrabtree.com, kharrigfeld@herumcrabtree.com, Janelle Krattiger (jkrattiger@herumcrabtree.com, Jonathan Knapp (jonathan.knapp@sfgov.org) jonathan.knapp@sfgov.org, Rob Donlan (red@eslawfirm.com, 'Jennifer Spaletta' (jennifer@spallettalaw.com) jennifer@spallettalaw.com, ngmplcs@pacbell.net, McGinnis, Robin C.@DWR (Robin.McGinnis@water.ca.gov, "Dante Nomellini, Jr." (dantejr@pacbell.net) dantejr@pacbell.net, rjmorat@gmail.com, Valerie Kincaid (vkincaid@olaughlinparis.com, Linda Wood (lwood@olaughlinparis.com) lwood@olaughlinparis.com, Herrick, John @aol.com (jherrlaw@aol.com, Dean Ruiz (dean@hprlaw.net) dean@hprlaw.net, Stefanie Morris (smorris@swc.org) smorris@swc.org, O'Hanlon, Daniel (dohanlon@kmtg.com, Akroyd, Rebecca@KMTG (rakroyd@kmtg.com, Philip Williams (pwilliams@westlandswater.org) pwilliams@westlandswater.org, Unit, Wr_Hearing@Waterboards (Wr_Hearing.Unit@waterboards.ca.gov

Cc: Carrigan, Cris@Waterboards (Cris.Carrigan@waterboards.ca.gov, O'Hagan, John@Waterboards (John.O'Hagan@waterboards.ca.gov

The Prosecution Team has an update to the November 20 disclosure below. While preparing the pre-hearing brief of legal issues as directed by Hearing Officer Doduc, the Prosecution Team became aware of the attached delegations of authority allowing the Assistant Deputy Director for Water Rights to issue complaints under Water Code section 1055. The Prosecution Team was previously unaware of these delegations. The Prosecution Team understands that these delegations remain in effect.

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From: Tauriainen, Andrew@Waterboards

Sent: Friday, November 20, 2015 12:19 PM

To: Dan Kelly (dkelly@somachlaw.com); Jeanne Zolezzi; kharrigfeld@herumcrabtree.com; Janelle Krattiger; Jonathan Knapp (jonathan.knapp@sfgov.org); Rob Donlan; 'Jennifer Spaletta' (jennifer@spallettalaw.com); ngmplcs@pacbell.net; McGinnis, Robin C.@DWR; "Dante Nomellini, Jr." (dantejr@pacbell.net); rjmorat@gmail.com; Valerie Kincaid; Linda Wood (lwood@olaughlinparis.com); Herrick, John @aol.com (jherrlaw@aol.com); Dean Ruiz (dean@hprlaw.net); Stefanie Morris (smorris@swc.org); O'Hanlon, Daniel; Akroyd, Rebecca@KMTG; Philip Williams (pwilliams@westlandswater.org); wrhearing@waterboards.ca.gov

Cc: Cris Carrigan; O'Hagan, John@Waterboards

Subject: BBID ACLC Hearing WSID Draft CDO Hearing - Delegations of Authority

Attached please find the delegations of authority inquired about by BBID's counsel this morning.

Andrew Tauriainen, Attorney III

State Water Resources Control Board
Office of Enforcement
1001 I Street, 16th Floor
Sacramento, CA 95814
tel: (916) 341-5445
fax: (916)341-5896
atauriainen@waterboards.ca.gov

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Thomas H. Hietak
Secretary for
Enforcement
Division

State Water Resources Control Board

Executive Office

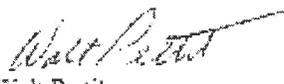
591 P Street - Sacramento, California 95814 - (916) 637-4944
Mail Stop 4000 - P.O. Box 90 - Sacramento, California - 95812-0100
Fax: (916) 637-4942 - Web Site Address: <http://www.waterboards.ca.gov>



Gray Davis
Governor

MEMORANDUM

TO: Harry M. Schaeffer, Chief
Division of Water Rights

FROM: 
Walt Pettit
Executive Director
EXECUTIVE OFFICE

DATE: MAY 17 1999

SUBJECT: DELEGATION OF AUTHORITY PROVIDED BY WATER CODE
SECTION 1055, SUBDIVISION (A)

1.0 Water Code section 1055, subdivision (a) provides that the Executive Director of the State Water Resources Control Board (SWRCB) may issue a complaint to any person on whom administrative civil liability may be imposed pursuant to Section 1052 and Section 5107. The complaint shall allege the act or failure to act that constitutes a trespass or violation, the provision of law authorizing civil liability to be imposed, and the proposed civil liability. The Executive Director is authorized to delegate authority to a deputy or other officer or employee of the SWRCB pursuant to Water Code section 7.

2.0 The authority to issue a complaint and impose a civil liability as provided by Water Code section 1055, subdivision (a) is hereby delegated to the Chief, Division of Water Rights. This authority is delegated without restriction; however, the Chief, Division of Water Rights, shall keep the Executive Director and the SWRCB informed of any administrative civil liability complaints that may be highly controversial or that pose a risk of litigation.

Attachments

cc: Board Members
Dale Clayborne
✓William R. Amwater



20080827 Redelegation
memo - AC...mplains.pdf



Linda S. Adams
Secretary for
Environmental Protection

State Water Resources Control Board



Arnold Schwarzenegger
Governor

Division of Water Rights

1001 I Street, 14th Floor ♦ Sacramento, California 95814 ♦ 916.341.5300
P.O. Box 2000 ♦ Sacramento, California 95812-2000
Fax: 916.341.5400 ♦ www.waterrights.ca.gov

MEMORANDUM

TO: James W. Kassel
Assistant Deputy Director for Water Rights
DIVISION OF WATER RIGHTS

FROM: 
Victoria A. Whitney
Deputy Director for Water Rights
DIVISION OF WATER RIGHTS

DATE: AUG 27 2008

SUBJECT: REDELEGATION OF AUTHORITY PROVIDED BY WATER CODE SECTION 1055, SUBDIVISION (A)

Water Code section 1055, subdivision (a) provides that the Executive Director of the State Water Resources Control Board (State Water Board) may issue a complaint to any person on whom administrative civil liability may be imposed pursuant to Section 1052 and section 5107. The complaint shall allege the act or failure to act that constitutes a trespass or violation, the provision of law authorizing civil liability to be imposed, and the proposed civil liability. The Executive Director is authorized to delegate authority to a deputy or other officer or employee of the State Water Board pursuant to Water Code section 7.

By memorandum dated May 17, 1999, the Executive Director delegated to the Deputy Director for Water Rights [then known as Chief of the Division of Water Rights] the authority to issue a complaint and impose a civil liability as provided by Water Code section 1055, subdivision (a). The delegation is without restriction, provided that the Deputy Director for Water Rights shall keep the Executive Director and the State Water Board informed of any administrative civil liability complaints that may be highly controversial or pose a risk of litigation.

The authority to issue an administrative civil liability complaint as provided by Water Code section 1055, subdivision (a) and delegated to the Deputy Director for Water Rights is hereby redelegated to the Assistant Deputy Director for Water Rights. The Assistant Deputy Director for Water Rights shall keep the Deputy Director, the Executive Director and the State Water Board informed of any administrative civil liability complaints that may be highly controversial or that pose a risk of litigation.

cc: (see next page)

James W. Kassel

- 2 -

AUG 27 2008

cc: Dorothy Rice
Executive Director
State Water Board

Thomas Howard
Chief Deputy Director
State Water Board

Michael Lauffer
Chief Counsel
Office of Chief Counsel

Andrew Sawyer
Assistant Chief Counsel
Office of Chief Counsel



State Water Resources Control Board

10
2. ATT



Gray Davis
Governor

Winston H. Hickox
Secretary for
Environmental
Protection

Executive Office
901 P Street • Sacramento, California 95814 • (916) 657-0941
Mailing Address: P.O. Box 100 • Sacramento, California • 95812-0100
FAX (916) 657-0932 • Web Site Address: <http://www.swrcb.ca.gov>

MEMORANDUM

TO: Harry M. Schueller, Chief
Division of Water Rights

FROM: 
Walt Pettit
Executive Director
EXECUTIVE OFFICE

DATE: MAY 17 1999

SUBJECT: DELEGATION OF AUTHORITY PROVIDED BY WATER CODE
SECTION 1055, SUBDIVISION (A)

- 1.0 Water Code section 1055, subdivision (a) provides that the Executive Director of the State Water Resources Control Board (SWRCB) may issue a complaint to any person on whom administrative civil liability may be imposed pursuant to Section 1052 and Section 5107. The complaint shall allege the act or failure to act that constitutes a trespass or violation, the provision of law authorizing civil liability to be imposed, and the proposed civil liability. The Executive Director is authorized to delegate authority to a deputy or other officer or employee of the SWRCB pursuant to Water Code section 7.
- 2.0 The authority to issue a complaint and impose a civil liability as provided by Water Code section 1055, subdivision (a) is hereby delegated to the Chief, Division of Water Rights. This authority is delegated without restriction; however, the Chief, Division of Water Rights, shall keep the Executive Director and the SWRCB informed of any administrative civil liability complaints that may be highly controversial or that pose a risk of litigation.

Attachment

cc: Board Members
Dale Claypoole
✓ William R. Attwater

EXHIBIT D

From: **Tauriainen, Andrew@Waterboards** Andrew.Tauriainen@waterboards.ca.gov
Subject: RE: BBID ACLC Hearing WSID Draft CDO Hearing - Delegations of Authority
Date: January 27, 2016 at 6:03 PM
To: Michael Vergara mvergara@somachlaw.com
Cc: Dan Kelly dkelly@somachlaw.com



Ok.

Andrew Tauriainen, Attorney III
State Water Resources Control Board
Office of Enforcement
1001 I Street, 16th Floor
Sacramento, CA 95814
tel: (916) 341-5445
fax: (916)341-5896
atauriainen@waterboards.ca.gov

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From: Michael Vergara [mvergara@somachlaw.com]
Sent: Wednesday, January 27, 2016 5:54 PM
To: Tauriainen, Andrew@Waterboards
Cc: Dan Kelly
Subject: Re: BBID ACLC Hearing WSID Draft CDO Hearing - Delegations of Authority

Andrew,

The attached documents do not "obviate" BBID's motion to dismiss based on Mr. O'Hagan's lack of authority to issue an ACL complaint. As stated in BBID's motion, under the relevant statute the Legislature expressly placed the authority to issue ACL complaints with the Executive Director. As provided in the case law cited in the motion, this authority is personal to the Executive Director, and can not be further delegated by him without additional action by the Legislature. Furthermore, as observed in BBID's motion to dismiss, the Legislature subsequently delegated authority to the Delta Watermaster to issue ACL complaints relating to the Delta, and that authority rests exclusively with him. Nothing in the documents you initially submitted to us on Monday (and sent again today) refute the case law cited in BBID's motion.

Best Regards,

Mike

[cid:77256F78-B61E-4C68-9789-75C93E233F49]

Michael E. Vergara | Attorney

500 Capitol Mall, Suite 1000 | Sacramento, CA 95814
Office 916.446.7979 | Direct 916.469-3824 | Fax 916.446.8199 | mvergara@somachlaw.com
<http://www.somachlaw.com>

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On Jan 27, 2016, at 4:45 PM, Tauriainen, Andrew@Waterboards
<Andrew.Tauriainen@waterboards.ca.gov<mailto:Andrew.Tauriainen@waterboards.ca.gov>> wrote:

Dan, Michael:

It appears that the attached delegations obviate your motion to dismiss regarding delegation of authority. I apologize for the confusion; the scrivener's error in the second sentence of paragraph 3 of the Complaint comes from a template that predates my time representing the Division of Water Rights. I only became aware of the error and the actual delegation authority a few days ago. Given that the authority has been properly delegated, and the scrivener's error is in no way prejudicial, I ask that you withdraw your motion.

Andrew Tauriainen, Attorney III
State Water Resources Control Board
Office of Enforcement
1001 I Street, 16th Floor
Sacramento, CA 95814
tel: (916) 341-5445
fax: (916)341-5896
atauriainen@waterboards.ca.gov<mailto:atauriainen@waterboards.ca.gov>

attachment@waterboards.ca.gov&main.attachment@waterboards.ca.gov

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SOMACH SIMMONS & DUNN
ATTORNEYS AT LAW

From: **Tauriainen, Andrew@Waterboards** Andrew.Tauriainen@waterboards.ca.gov 
Subject: FW: BBID ACLC Hearing WSID Draft CDO Hearing - Delegations of Authority
Date: January 27, 2016 at 4:45 PM
To: Dan Kelly (dkelly@somachlaw.com) dkelly@somachlaw.com, Michael Vergara (mvergara@somachlaw.com) mvergara@somachlaw.com



Dan, Michael:

It appears that the attached delegations obviate your motion to dismiss regarding delegation of authority. I apologize for the confusion; the scrivener's error in the second sentence of paragraph 3 of the Complaint comes from a template that predates my time representing the Division of Water Rights. I only became aware of the error and the actual delegation authority a few days ago. Given that the authority has been properly delegated, and the scrivener's error is in no way prejudicial, I ask that you withdraw your motion.

Andrew Tauriainen, Attorney III
State Water Resources Control Board
Office of Enforcement
1001 I Street, 16th Floor
Sacramento, CA 95814
tel: (916) 341-5445
fax: (916)341-5896
atauriainen@waterboards.ca.gov

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From: Tauriainen, Andrew@Waterboards
Sent: Monday, January 25, 2016 12:00 PM
To: Dan Kelly (dkelly@somachlaw.com); Jeanne Zolezzi; kharrigfeld@herumcrabtree.com; Janelle Krattiger; Jonathan Knapp (jonathan.knapp@sfgov.org); Rob Donlan; 'Jennifer Spaletta' (jennifer@spalettalaw.com); ngmplcs@pacbell.net; McGinnis, Robin C.@DWR; "Dante Nomellini, Jr." (dantejr@pacbell.net); rjmorat@gmail.com; Valerie Kincaid; Linda Wood (lwood@olaughlinparis.com); Herrick, John @aol.com (jherrlaw@aol.com); Dean Ruiz (dean@hprlaw.net); Stefanie Morris (smorris@swc.org); O'Hanlon, Daniel; Akroyd, Rebecca@KMTG; Philip Williams (pwilliams@westlandswater.org); wrhearing@waterboards.ca.gov
Cc: Cris Carrigan; O'Hagan, John@Waterboards
Subject: RE: BBID ACLC Hearing WSID Draft CDO Hearing - Delegations of Authority

The Prosecution Team has an update to the November 20 disclosure below. While preparing the pre-hearing brief of legal issues as directed by Hearing Officer Doduc, the Prosecution Team became aware of the attached delegations of authority allowing the Assistant Deputy Director for Water Rights to issue complaints under Water Code section 1055. The Prosecution Team was previously unaware of these delegations. The Prosecution Team understands that these delegations remain in effect.

Andrew Tauriainen, Attorney III
State Water Resources Control Board

Office of Enforcement
1001 I Street, 16th Floor
Sacramento, CA 95814
tel: (916) 341-5445
fax: (916)341-5896
atauriainen@waterboards.ca.gov

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From: Tauriainen, Andrew@Waterboards
Sent: Friday, November 20, 2015 12:19 PM
To: Dan Kelly (dkelly@somachlaw.com); Jeanne Zolezzi; kharrigfeld@herumcrabtree.com; Janelle Krattiger; Jonathan Knapp (jonathan.knapp@sfgov.org); Rob Donlan; 'Jennifer Spaletta' (jennifer@spalettalaw.com); ngmplcs@pacbell.net; McGinnis, Robin C.@DWR; "Dante Nomellini, Jr." (dantejr@pacbell.net); rjmorat@gmail.com; Valerie Kincaid; Linda Wood (lwood@olaughlinparis.com); Herrick, John @aol.com (jherrlaw@aol.com); Dean Ruiz (dean@hprlaw.net); Stefanie Morris (smorris@swc.org); O'Hanlon, Daniel; Akroyd, Rebecca@KMTG; Philip Williams (pwilliams@westlandswater.org); wrhearing@waterboards.ca.gov
Cc: Cris Carrigan; O'Hagan, John@Waterboards
Subject: BBID ACLC Hearing WSID Draft CDO Hearing - Delegations of Authority

Attached please find the delegations of authority inquired about by BBID's counsel this morning.

Andrew Tauriainen, Attorney III
State Water Resources Control Board
Office of Enforcement
1001 I Street, 16th Floor
Sacramento, CA 95814
tel: (916) 341-5445
fax: (916)341-5896
atauriainen@waterboards.ca.gov

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William H. Hickox
Executive Director
Enforcement

State Water Resources Control Board

Executive Office

501 J Street • Sacramento, California 95814 • (916) 637-0941
Mailing Address: P.O. Box 409 • Sacramento, California • 95812-0409
FAX: (916) 637-0942 • Web Site Address: <http://www.swrcb.ca.gov>



Gray Davis
Governor

MEMORANDUM

TO: Harry M. Schaeffer, Chief
Division of Water Rights

FROM: *Walt Pettit*
Walt Pettit
Executive Director
EXECUTIVE OFFICE

DATE: MAY 17 1999

SUBJECT: DELEGATION OF AUTHORITY PROVIDED BY WATER CODE SECTION 1055, SUBDIVISION (A)

1.0 Water Code section 1055, subdivision (a) provides that the Executive Director of the State Water Resources Control Board (SWRCB) may issue a complaint to any person on whom administrative civil liability may be imposed pursuant to Section 1052 and Section 5107. The complaint shall allege the act or failure to act that constitutes a trespass or violation, the provision of law authorizing civil liability to be imposed, and the proposed civil liability. The Executive Director is authorized to delegate authority to a deputy or other officer or employee of the SWRCB pursuant to Water Code section 7.

2.0 The authority to issue a complaint and impose a civil liability as provided by Water Code section 1055, subdivision (a) is hereby delegated to the Chief, Division of Water Rights. This authority is delegated without restriction; however, the Chief, Division of Water Rights, shall keep the Executive Director and the SWRCB informed of any administrative civil liability complaints that may be highly controversial or that pose a risk of litigation.

Attachment

cc: Board Members
Dale Clayson
✓ William R. Attwater



EXHIBIT E

ANDREW TAURIAINEN (SBN 214837)
JOHN PRAGER (SBN 289610)
Office of Enforcement
State Water Resources Control Board
1001 I Street, 16th Floor
Sacramento, California 95814
Telephone: (916) 341-5445
Fax: (916) 341-5896
E-mail: andrew.tauriainen@waterboards.ca.gov

Attorneys for the Prosecution Team

BEFORE THE STATE WATER RESOURCES CONTROL BOARD

In the Matter of the Administrative Civil Liability Complaint Against Byron Bethany Irrigation District)	DECLARATION OF MICHAEL GEORGE IN SUPPORT OF PROSECUTION TEAM'S OPPOSITION TO BYRON-BETHANY IRRIGATION DISTRICT'S MOTION TO
In the Matter of the Draft Cease and Desist Order Against the West Side Irrigation District)	DISMISS/DELEGATION

I, Michael George, declare as follows:

1. I have served as Delta Watermaster since January 5, 2015, when I began a four-year appointed term. I have personal knowledge of the facts stated in this declaration and, if called as a witness, could testify competently thereto.

2. It is my understanding and belief that, at the time my term commenced, the State Water Resources Control Board's (State Water Board's) prior delegation of authority to the Delta Watermaster, Resolution 2012-0048, had expired. The State Water Board adopted the current delegation of authority to the Delta Watermaster, Resolution 2015-0058, on September 1, 2015.

3. WaterCode section 85230(b) provides in pertinent part: "The Delta Watermaster shall exercise the board's authority to provide timely monitoring and enforcement of board orders and license and permit terms and conditions... The Delta Watermaster's authority shall be limited to diversions in the Delta, and for the monitoring and enforcement of the board's orders and license and permit terms and conditions that apply to conditions in the Delta."

4. As described in my written testimony, submitted as Prosecution Team Exhibit WR-21, I was aware of and actively participated in the investigation leading to the draft

1 Cease and Desist Order issued against the West Side Irrigation District (WSID) beginning
2 in May, 2015.

3 5. I was also aware of and intermittently participated in discussions with members
4 of the Division Water Rights and enforcement counsel regarding the pending
5 Administrative Civil Liability Complaint against Byron-Bethany Irrigation District (BBID)
6 beginning in June, 2015.

7 6. Division of Water Rights staff and I discussed the delegation of authority issues
8 in the period leading up to issuance of the WSID and BBID enforcement notices. I
9 expressed my understanding that Resolution 2012-0048 was no longer in force, and thus,
10 my position lacked delegated authority to address internal procedures related to
11 enforcement action in the Delta until the State Water Board adopted a new delegation
12 resolution. However, in the exercise of my statutory responsibility to "exercise the board's
13 authority....to issue a notice of a proposed cease and desist order or administrative
14 liability complaint", I verbally authorized the Assistant Deputy Director for Water Rights to
15 issue the WSID and BBID notices.

16 I declare under penalty of perjury under the laws of the State of California that the
17 foregoing is true and correct.

18
19 Date: February 5, 2016



20 Michael George
21 DELTA WATERMASTER
22 State Water Resources Control Board
23
24
25
26
27
28

EXHIBIT F



RECEIVED

JUL 22 2015



EDMUND G. BROWN JR.
GOVERNOR

MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

State Water Resources Control Board

Byron-Bethany
Irrigation District

JUL 20 2015

Byron-Bethany Irrigation District
Attn: Rick Gilmore, General Manager
7995 Bruns Road
Byron, CA 94514

CERTIFIED MAIL NO. 7003 1680 0000 2965 9480

Daniel Kelley
General Counsel, Byron-Bethany Irrigation District
Somach Simmons & Dunn
500 Capital Mall, Suite 1000
Sacramento, CA 95814

CERTIFIED MAIL NO. 7003 1680 0000 2965 9473

Dear Messrs. Gilmore and Kelley:

ENFORCEMENT ACTION ENF01951 – ADMINISTRATIVE CIVIL LIABILITY COMPLAINT REGARDING UNAUTHORIZED DIVERSION OF WATER FROM THE INTAKE CHANNEL TO THE BANKS PUMPING PLANT (FORMERLY ITALIAN SLOUGH) IN CONTRA COSTA COUNTY

Enclosed is an Administrative Civil Liability (ACL) Complaint relating to your diversions from the intake channel to the Banks Pumping Plant (formerly Italian Slough) after June 12, 2015. This letter serves as notice to Byron-Bethany Irrigation District (BBID) that the State Water Resources Control Board (State Water Board), Division of Water Rights (Division), intends to impose the proposed Administrative Civil Liability.

You have 20 days from receipt of this notice to act or face additional enforcement without further notice. Therefore, this matter requires your immediate attention.

VIOLATION DESCRIPTION

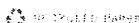
BBID is alleged to have diverted a total of approximately two thousand sixty-seven (2,067) acre-feet over the course of thirteen days, from June 13 through June 25, 2015, during which water was unavailable to serve BBID's water right. The violation is further described in the enclosed ACL Complaint.

ADMINISTRATIVE CIVIL LIABILITY

California Water Code, section 1052, prohibits the unauthorized diversion of water. Water Code section 1052 authorizes the State Water Board to administratively impose civil liability for unauthorized diversions of water during periods of drought emergency in an amount not to exceed \$1,000 per day of violation plus \$2,500 per acre-foot diverted without authorization.

FELICIA MARCUS, CHAIR | THOMAS HOWARD, EXECUTIVE DIRECTOR

1001 J Street, Sacramento, CA 95814 | Mailing Address: P.O. Box 100, Sacramento, CA 95812-0100 | www.waterboards.ca.gov



BBID

JUL 20 2015

I am hereby issuing the enclosed ACL Complaint proposing that a liability of \$1,553,250 be imposed for your diversion of water during periods when water supplies were insufficient to fulfill your claimed right. The ACL Complaints provides for a potentially reduced penalty upon showing that water pumped during the time considered under this action was used for health and safety needs, or for critical power generation. **If you fail to respond to the ACL Complaint in one of the manners below within 20 days of receiving this notice, then the State Water Board will issue an ACL Order and seek recovery of this proposed liability amount as authorized by California Water Code section 1055.4.**

If you disagree with the facts or allegations set forth in the ACL Complaint, you may request a hearing before the State Water Board. **Your request for a hearing must be in writing, signed by you or on your behalf, and mailed or hand-delivered to ensure receipt by the State Water Board within 20 days from the date you receive this notice.** You may mail your written hearing request to: State Water Resources Control Board, Division of Water Rights, Attn: Enforcement Section, P.O. Box 2000, Sacramento, CA 95812-2000.

You may hand-deliver your written hearing request to: State Water Resources Control Board, Division of Water Rights, Records Unit, 1001 I Street, 2nd Floor, Sacramento, CA 95814.

If you request a hearing, a hearing will be scheduled before the State Water Board or a designated hearing officer. Prior to the hearing, you will be required to submit any written testimony and other evidence you would like the State Water Board to consider. You will be notified of the hearing date and the submittal deadlines as soon as they are scheduled.

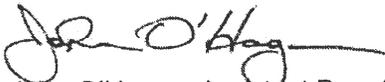
If you fail to come into compliance or request a hearing within 20 days of the date you receive this notice, the State Water Board will adopt the ACL.

SUMMARY OF OPTIONS

1. Submit a written request for hearing within 20 days of receiving the enclosed ACL Complaint; or
2. Do nothing, and receive a final ACL Order.

If you have any questions regarding the ACL Complaint, or if you have information that you want to provide in response to this complaint, or information that you believe the State Water Board staff should otherwise consider, please contact Kathy Mrowka, Manager, Enforcement Section at (916) 341-5363 or Kathy.Mrowka@waterboards.ca.gov; or Andrew Tauriainen, Attorney III, Office of Enforcement, at (916) 341-5445 or Andrew.Tauriainen@waterboards.ca.gov, or send the information directly to them via email.

Sincerely,



John O'Hagan, Assistant Deputy Director
Division of Water Rights

Enclosures: 1) Administrative Civil Liability Complaint

STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT

In the Matter of Unauthorized Diversion by

BYRON-BETHANY IRRIGATION DISTRICT

SOURCE: Intake Channel to the Banks Pumping Plant (formerly Italian Slough)

COUNTY: Contra Costa

YOU ARE HEREBY GIVEN NOTICE THAT:

1. Byron-Bethany Irrigation District (BBID or District) is alleged to have diverted and used water in violation of California Water Code section 1052, subdivision (a), which provides that the diversion or use of water subject to Division 2 of the Water Code other than as authorized in Division 2 is a trespass.
2. Water Code section 1052, subdivision (c), provides that any person or entity committing a trespass during a period for which the Governor has issued a proclamation of a state of drought emergency may be liable in an amount not to exceed the sum of one thousand dollars (\$1,000) for each day the trespass occurs plus two thousand five hundred dollars (\$2,500) for each acre-foot of water diverted or used in excess of that diverter's rights. Water Code section 1052, subdivision (d)(2), provides that civil liability may be imposed administratively by the State Water Resources Control Board (State Water Board or Board) pursuant to Water Code section 1055.
3. Water Code section 1055, subdivision (a), provides that the Executive Director of the State Water Board may issue a complaint to any person or entity on whom Administrative Civil Liability (ACL) may be imposed. On June 5, 2012, the Executive Director delegated this authority to the Deputy Director for Water Rights. State Water Board Resolution 2012-0029 authorizes the Deputy Director for Water Rights to issue an order imposing an ACL when a complaint has been issued and no hearing has been requested within 20 days of receipt of the complaint. The Deputy Director for Water Rights has redelegated this authority to the Assistant Deputy Director for Water Rights pursuant to State Water Board Resolution 2012-0029.

ALLEGATIONS

4. On June 30, 2010, BBID submitted an Initial Statement of Water Diversion and Use (Statement), which the State Water Board, Division of Water Rights (Division) designated as Statement 021256 (S021256). Under S021256, BBID claims a pre-1914 appropriative water right to the Intake Channel to the Banks Pumping Plant, formerly Italian Slough, in Contra Costa County. The Statement also indicates that BBID diverted approximately 26,179 acre-feet (af) in 2009 for municipal and industrial and agricultural use within its boundaries.
5. On July 1, 2013, BBID submitted Supplemental Statements for S021256, for the years 2010, 2011 and 2012. BBID's Supplemental Statements each indicates that the District first put water to use in 1917, and that the purpose of use for the District's diversions is irrigation of 12,500 acres. The 2010 Supplement Statement indicates that BBID diverted 25,269 af and applied

- approximately 22,302 af to beneficial use. The 2011 Supplemental Statement indicates that BBID diverted 22,344 af and applied 19,779 af to beneficial use. The 2012 Supplemental Statement indicates that BBID diverted 32,167 af and applied 28,345 af to beneficial use.
6. BBID does not hold or claim any other appropriative or riparian water rights on record with the State Water Board, although S021256 indicates that BBID holds Contract No. 14-06-200-785-LTR1 with the United States Bureau of Reclamation (Reclamation). In 2014 and 2015, Reclamation's agricultural contractors in the Delta were allocated zero percent of their contract quantity (available at <http://www.usbr.gov/newsroom/newsrelease/detail.cfm?RecordID=49115> [last accessed June 30, 2015]). BBID confirmed in a public statement dated June 12, 2015, that it had received zero water supply from Reclamation in both 2014 and 2015 (available at <http://bbid.org/wp-content/uploads/2015/06/BBID-Curtailment-Response-FINAL1.pdf> [last accessed June 30, 2015].)
 7. On January 17, 2014, Governor Edmund G. Brown Jr. issued Proclamation No. 1-17-2014, declaring a State of Emergency to exist in California due to severe drought conditions.
 8. Also on January 17, 2014, the State Water Board issued a "Notice of Surface Water Shortage and Potential Curtailment of Water Right Diversions" (2014 Shortage Notice). The 2014 Shortage Notice alerts water right holders in critically dry watersheds that water may become unavailable to satisfy beneficial uses at junior priorities.
 9. On April 25, 2014, Governor Brown issued a Proclamation of a Continued State of Emergency due to drought conditions, to strengthen the state's ability to manage water and habitat effectively in drought conditions.
 10. On May 27, 2014, the State Water Board issued a "Notice of Unavailability of Water and Immediate Curtailment for Those Diverting Water in the Sacramento and San Joaquin River Watershed with a post-1914 Appropriative Right" (2014 Unavailability Notice), which notifies all holders of post-1914 appropriative water rights within the Sacramento and San Joaquin River watersheds of the lack of availability of water to serve their post-1914 water rights, with some minor exceptions for non-consumptive diversions. The 2014 Unavailability Notice did not apply to pre-1914 appropriative rights such as that claimed by BBID. The State Water Board notified the most senior right holders in stages as water became available to serve their rights, and by November 19, 2014, had notified all right holders of availability for all diversions in the Sacramento and San Joaquin River watersheds.
 11. On January 23, 2015, the State Water Board issued a "Notice of Surface Water Shortage and Potential for Curtailment of Water Right Diversions for 2015" (2015 Shortage Notice). The 2015 Shortage Notice alerted water right holders in critically dry watersheds that water may become unavailable to satisfy beneficial uses at junior priorities.
 12. On February 4, 2015, the State Water Board issued Order WR 2015-0002-DWR, requiring pre-1914 and riparian water right claimants representing the top 90 percent of such claimants by volume in the Sacramento and San Joaquin River watersheds and the Delta to submit information relating to their claimed water right, the monthly amounts of water diverted and the basis of right claimed for diversions in 2014, and monthly diversion information and anticipated monthly diversion information for each month starting with February, 2015, to be submitted by the 5th of each succeeding month until the drought ends.
 13. BBID is subject to Order WR 2015-0002-DWR, and in response submitted information indicating that its predecessor, the Byron-Bethany Irrigation Company, recorded notice of an appropriation of water on or around May 18, 1914. Thus, BBID claims that its pre-1914 water right has a

priority date of May 18, 1914.¹

14. BBID also submitted water diversion and use information for 2014, projected monthly diversions for 2015, and actual monthly diversions through May, 2015. BBID reports that it diverted 30,204 af in 2014 and projected diversions of 25,452 af in 2015. BBID's reported actual monthly diversion amounts for January through May, 2015, are generally similar to reported diversions for the same months in prior years where such information is available. BBID's reported projected diversions are similar to the reported actual diversions for the same months in prior years where such information is available. From August 1 to October 31, 2014, BBID reports it pumped 1,573 af of water under transfer that was approved by State Water Board Order dated August 27, 2014.
15. On April 1, 2015, Governor Brown issued Executive Order B-29-15 (Executive Order) to strengthen the state's ability to manage water and habitat effectively in drought conditions and called on all Californians to redouble their efforts to conserve water. The Executive Order finds that the continuous severe drought conditions present urgent challenges across the state including water shortages for municipal water use and for agricultural production, increased wildfire activity, degraded habitat for fish and wildlife, threat of saltwater contamination, and additional water scarcity if drought conditions continue. The Executive Order confirms that the orders and provisions in the Governor's previous drought proclamations and orders, the January 17, 2014, Proclamation, April 25, 2015, Proclamation, and Executive Orders B-26-14 and B-28-14, remain in full force and effect. On April 2, 2015, the State Water Board issued another notice warning that notices of unavailability of water were likely to be issued soon.
16. On April 23, 2015, the State Water Board issued a "Notice of Unavailability of Water and Immediate Curtailment for Those Diverting Water in the San Joaquin River Watershed with a Post-1914 Appropriative Right" (April 23 Unavailability Notice), which notifies all holders of post-1914 appropriative water rights within the San Joaquin River watershed of the lack of availability of water to serve their post-1914 water rights, with some minor exceptions for non-consumptive diversions. The State Water Board issued a similar notice for post-1914 appropriative water rights within the Sacramento River watershed on May 1, 2015 (May 1 Unavailability Notice). The April 23 and May 1 Unavailability Notices do not apply to pre-1914 appropriative rights such as that claimed by BBID.
17. On June 12, 2015, the State Water Board issued a "Notice of Unavailability of Water and Need for Immediate Curtailment for Those Diverting Water in the Sacramento-San Joaquin Watersheds and Delta with a Pre-1914 Appropriative Claim Commencing During or After 1903" (June 12 Unavailability Notice), which notifies all holders of pre-1914 appropriative water rights with a priority date of 1903 and later within the Sacramento and San Joaquin River watersheds of the lack of availability of water to serve their rights, with some minor exceptions for non-consumptive uses.
18. Drought management of water rights is necessary to ensure that water to which senior water right holders are entitled is actually available to them, which requires that some water remain in most streams to satisfy senior demands at the furthest downstream point of diversion of these senior water rights. The June 12 Unavailability Notice reflects the State Water Board's determination that the existing water available in the Sacramento-San Joaquin watersheds and the Delta is insufficient to meet the demands of diverters with claims of pre-1914 appropriative rights with a priority date of 1903 and later. Continued diversion when there is no water available under the priority of the right constitutes unauthorized water diversion and use. Unauthorized diversion is subject to enforcement. (Wat. Code § 1052.)

¹ The term "pre-1914" appropriative water right means those appropriative rights commenced prior to December 19, 1914, the effective date of the Water Commission Act. Therefore, it is possible to have a "pre-1914" appropriative water right with a priority date in 1914.

Byron-Bethany Irrigation District

19. The State Water Board determines the availability of water for water rights of varying priorities in any watershed by comparing the current and projected available water supply with the total water right diversion demand.
20. To determine water availability, the Board relies upon the full natural flows of watersheds calculated by the Department of Water Resources (DWR) for certain watersheds in its Bulletin 120 and in subsequent monthly updates. "Full natural flow," or "unimpaired runoff," represents the natural water production of a river basin, unaltered by upstream diversions, storage, storage releases, or by export or import of water to or from other watersheds. The full natural flow amount is different than the measured stream flows at the given measurement points because the measured flows may be higher or lower due to upstream operations. Forecasted flow data is uncertain, so DWR provides the data in the form of "levels of exceedance" or simply "exceedance" to show the statistical probability that the forecasted supply will occur. The exceedance is simply the percent of the time that the actual flow is expected to exceed the projected flow. The 90 percent exceedance hydrology assumes inflows from rainfall and snowmelt at levels that are likely to be met or exceeded by actual flows with a 90 percent probability, or in other words, there is a ten percent or less chance of actual conditions turning out to be this dry or drier. In April and early May, the State Water Board uses the 90% and 99% exceedance amounts for its analyses due to low flow conditions. DWR's daily natural flow calculations are also used in the analysis.
21. To determine water demand, the State Water Board relies on information supplied by water right holders on annual or triennial reports of water diversion and use required to be true and accurate to the best of the knowledge of the diverters. The Board also incorporates 2014 diversion data submitted pursuant to Order WR 2015-0002. All reported monthly water diversion data is compiled by watershed, type of right and priority dates. The Board performs quality control checks and removes obvious errors, excess reporting, removes demand for direct diversion for power, and makes additional changes based on stakeholders' input. The corrected demand data includes the 2014 reported data for 90% of the watershed demand plus, for the remaining diverters, an averaged diversion amount for 2010 through 2013. These monthly diversion demands are grouped into water right types (riparian, pre-1914 and post-1914 rights).
22. The State Water Board consistently adjusts the water availability and demand analyses based on new information obtained from stakeholders, or adjustments to projected flows from the DWR. State Water Board staff reviews this information and provides revisions to its data set and graphs that are all shown on the Watershed Analysis website (http://www.waterboards.ca.gov/waterrights/water_issues/programs/drought/analysis/).
23. The State Water Board's Watershed Analysis website provides updated graphical summations and spreadsheets containing supporting analysis of the availability and demand analyses. The graphical summations show priorities with monthly demands for the total riparian demand at bottom, the pre-1914 demands added to riparian and depicted above the riparian demand. The monthly amounts are averaged into cubic feet per second for graphical purposes. See, for example, the combined Sacramento/San Joaquin River Basin Senior Supply/Demand Analysis (http://www.waterboards.ca.gov/waterrights/water_issues/programs/drought/analysis/docs/sacsjombined.pdf). The Curtailment Analysis website also provides graphical summations of the San Joaquin River Basin Senior Supply/Demand Analysis with Proportional Delta Demand (http://www.waterboards.ca.gov/waterrights/water_issues/programs/drought/analysis/docs/siprorated.pdf) and the Sacramento River Basin Senior Supply/Demand Analysis with Proportional Delta Demand (http://www.waterboards.ca.gov/waterrights/water_issues/programs/drought/analysis/docs/sacpro rated.pdf).
24. This analysis shows that by June 12, 2015, available supply was insufficient to meet the demands of appropriative rights with priority dates of 1903 and later throughout the Sacramento and San Joaquin River watersheds and the Delta.

25. The June 12 Unavailability Notice applies to S021256 because BBID claims a priority date of May 18, 1914. BBID received an electronic copy of the June 12 Unavailability Notice on June 12, 2015, via the Board's "Drought Updates" Lyriss email list system, because Rick Gilmore, BBID's General Manager is a subscriber to that system (via email address r.gilmore@bbid.org). Moreover, BBID issued a public statement on June 12, 2015, in response to the June 12 Unavailability Notice (available at <http://bbid.org/wp-content/uploads/2015/06/BBID-Curtailment-Response-FINAL1.pdf> [last accessed June 25, 2015].) BBID received a paper copy of the June 12 Unavailability Notice no later than June 15, 2015.
26. BBID's diversions are recorded by DWR and posted to the California Data Exchange Center (CDEC) (<http://cdec.water.ca.gov/cgi-progs/queryDaily?BBID>) also available at <http://www.water.ca.gov/swp/operationscontrol/docs/delta/DeltaHydrology.pdf>). CDEC reports that BBID has diverted water each day since the June 12 Unavailability Notice:
- | Date | Avg Diversion Rate (cfs) | Amount Diverted (af) | Date | Avg Diversion Rate (cfs) | Amount Diverted (af) |
|------------|--------------------------|----------------------|------------|--------------------------|----------------------|
| 06/13/2015 | 91 | 180 | 06/20/2015 | 96 | 190 |
| 06/14/2015 | 122 | 242 | 06/21/2015 | 99 | 196 |
| 06/15/2015 | 79 | 156 | 06/22/2015 | 62 | 123 |
| 06/16/2015 | 83 | 164 | 06/23/2015 | 61 | 121 |
| 06/17/2015 | 78 | 154 | 06/24/2015 | 67 | 132 |
| 06/18/2015 | 91 | 180 | 06/25/2015 | 36 | 71 |
| 06/19/2015 | 80 | 158 | 06/26/2015 | 0 | 0 |
27. The daily diversion rates through June 24 are comparable to the District's average daily diversion rates reported for June 2014 (4,842 af/30 days/1.9835=81.4 cfs), and those BBID reported as anticipated for June 2015. This daily rate is in excess of the basic minimum health and safety needs of Mountain House Community Service District. This indicates that BBID has continued its normal diversions following the June 12 Unavailability Notice.
28. BBID diverted a total of approximately two thousand sixty-seven (2,067) acre-feet over the course of thirteen days following the June 12 Unavailability Notice, specifically from June 13 through June 25, 2015.
29. On July 15, 2015, the State Water Board issued a Clarification to the Unavailability Notices indicating that, to the extent that any of the notices described above contain language that may be construed as an order requiring you to curtail diversions under your affected water right, that language has been rescinded. Similarly, any language requiring affected water right holders to submit curtailment certification forms has been rescinded.
30. Diversion or use of water by an appropriative water right holder when there is insufficient water supply available for that water right is an unauthorized diversion or use of water subject to Division 2 of the Water Code. Water Code section 1052, subdivision (a) provides that unauthorized diversion or use of water is a trespass.
31. This enforcement action is based on lack of available water supply under the priority of the right. The Unavailability Notices were issued for the purpose of advising the public and water diverters of the lack of available water under the priority of the rights identified in each notice; the notices are not the basis for this enforcement action.

PROPOSED CIVIL LIABILITY

32. Water Code section 1052 provides that the maximum civil liability that can be imposed by the State Water Board in this matter for the unauthorized diversion and use of the water during a

- drought period is \$1,000 for each day of trespass plus \$2,500 for each acre-foot of water diverted or used in excess of that diverter's water rights.
33. Evidence demonstrates that BBID's unauthorized diversions began on June 13, 2015, and continued until June 25, 2015, for a total of thirteen (13) days. Over that period, BBID diverted approximately two thousand sixty-seven (2,067) acre-feet of water in excess of that available to serve its claimed water right.
 34. Therefore, the maximum civil liability for the alleged violations is **\$5,180,500** [13 days at \$1,000 per day plus 2,067 acre-feet at \$2,500 per acre-foot].
 35. In determining the amount of civil liability, California Water Code section 1055.3 requires that the State Water Board consider all relevant circumstances, including, but not limited to, the extent of harm caused by the violation, the nature and persistence of the violation, the length of time over which the violation occurs, and any corrective action taken by the violator.
 36. In this case, BBID has made unauthorized diversions of water from the Intake Channel to the Banks Pumping Plant (formerly Italian Slough) during the most extreme drought in decades, when there was insufficient water supply available for BBID's claimed water right. BBID was aware that the State Water Board had determined that there was insufficient water supply available for BBID's claimed water right. These unauthorized diversions have reduced or threatened to reduce the amount of water available for downstream water right holders during an extreme drought emergency. Moreover, BBID's diversions likely reduced the water available for instream resources and riparian habitat within the Delta during an extreme drought emergency.
 37. BBID received an economic advantage over other legitimate water diverters in the area by foregoing the costs of buying replacement water during the violation period. During 2015, irrigation districts north of the Delta have paid at least \$250 per acre-foot of replacement water. Thus, by illegally diverting 2,067 acre-feet of water from June 13 through June 25, BBID avoided purchased water costs of at least \$516,750.
 38. The Division estimates that its staff cost to investigate the unauthorized diversion issues and develop the enforcement documents to be \$3,000.
 39. BBID is known to be serving water to Mountain House Community Service District and to power generation facilities that may be deemed critical energy suppliers. BBID and Mountain House Community Service District took corrective actions to secure water available via contract and transfer. Although these supplies were not provided during the violation period identified above, they are recognized as progressive correction actions to prevent unauthorized diversions. Also taken into consideration is the fact that BBID has stopped its diversions from June 26.
 40. Having taken into consideration the factors described above, the Assistant Deputy Director for Water Rights recommends an ACL for the unauthorized diversion of water in the amount of **\$1,553,250**. The recommended penalty is based on the circumstances known to this time, BBID's continued diversions despite lack of availability of water to serve its right during extreme ongoing drought conditions, and to provide a strong disincentive for continued unauthorized diversions by BBID and any similarly-situated parties. The Prosecution Team will consider adjustment of the recommended penalty if BBID provides evidence of the amounts of water pumped that were for health and safety needs or critical power generation.
 41. Should the matter go to hearing, the State Water Board may consider a different liability based on the evidence received, including additional staff costs incurred, up to the maximum amount provided by law. It is estimated that if this this matter goes to hearing, additional staff costs incurred for the prosecution staff would be approximately \$10,000.

RIGHT TO HEARING

42. BBID may request a hearing on this matter before the State Water Board. Any such request for hearing must be in writing and received or postmarked within 20 days of the date this notice is received. (California Water Code, § 1055, subd. (b).)
43. If BBID requests a hearing, BBID will have an opportunity to be heard and to contest the allegations in this Complaint and the imposition of an ACL by the State Water Board. If a hearing is requested, separate notice setting the time and place for the hearing will be mailed not less than 10 days before the hearing date.
44. If BBID requests a hearing, the State Water Board will consider at the hearing whether to impose the civil liability, and, if so, whether to adjust the proposed liability within the amount authorized by statute. Based on the evidence received at the hearing, the State Water Board may take any appropriate action in accordance with sections 100, 275, and 1050 et seq. of the California Water Code and its responsibilities under the public trust doctrine. Any State Water Board order imposing an ACL shall become final and effective upon issuance.
45. If BBID does not wish to request a hearing, please remit a cashier's check or money order within 20 days of the date of this Complaint for the amount of the ACL set forth above to:

State Water Resources Control Board
Division of Water Rights
Enforcement Section
P.O. Box 2000
Sacramento, CA 95812-2000
46. If BBID does not request a hearing and does not remit the ACL amount, the State Water Board may seek recovery of the ACL amount as authorized by Water Code section 1055.4.

STATE WATER RESOURCES CONTROL BOARD


John O'Hagan, Assistant Deputy Director
Division of Water Rights

Dated: JUL 20 2015

EXHIBIT G

1 ANDREW TAURIAINEN (SBN 214837)
JOHN PRAGER (SBN 289610)
2 Office of Enforcement
State Water Resources Control Board
3 1001 I Street, 16th Floor
Sacramento, California 95814
4 Telephone: (916) 341-5445
Fax: (916) 341-5896
5 E-mail: andrew.tauriainen@waterboards.ca.gov

6 Attorneys for the Prosecution Team

7 BEFORE THE STATE WATER RESOURCES CONTROL BOARD

8 In the Matter of the Administrative Civil)	DECLARATION OF ANDREW
Liability Complaint Against Byron		
9 Bethany Irrigation District)	TAURIAINEN IN SUPPORT OF
)	PROSECUTION TEAM'S OPPOSITION
10 In the Matter of the Draft Cease and)	MOTIONS TO DISMISS/SUMMARY
Desist Order Against the West Side		
11 Irrigation District)	JUDGMENT

12 **I, Andrew Tauriainen, declare as follows:**

13 1. I am an attorney with the State Water Resources Control Board (State Water
14 Board), Office of Enforcement. I am counsel for the Division of Water Rights (Division)
15 Prosecution Team in the above-entitled matters. I have personal knowledge of the facts
16 stated in this declaration and, if called as a witness, could testify competently thereto.

17 2. The Assistant Deputy Director for Water Rights issued a Draft Cease and
18 Desist Order (CDO) against the West Side Irrigation District (WSID) on July 16, 2015,
19 alleging that WSID diverted or threatened to divert water without authorization in violation
20 of Water Code section 1052. The Draft CDO is Prosecution Team Exhibit WR-1.

21 3. The Assistant Deputy Director for Water Rights issued an Administrative Civil
22 Liability (ACL) Complaint against Byron-Bethany Irrigation District (BBID) on July 20,
23 2015, alleging that BBID diverted water without authorization in violation of Water Code
24 section 1052. The ACL Complaint is Prosecution Team Exhibit WR-4.

25 4. The second paragraph on page 1 of the Draft CDO contains an error regarding
26 the authority to issue the Draft CDO. Because WSID is located within the Delta, the Delta
27 Watermaster is authorized to issue this enforcement action and to delegate this authority
28 to appropriate staff within the Division of Water Rights.

1 5. Paragraph 3 of the ACL Complaint contains a similar error regarding the
2 authority to issue the ACL Complaint. Because BBID is located within the Delta, the Delta
3 Watermaster is authorized to issue this enforcement action and to delegate this authority
4 to appropriate staff within the Division of Water Rights.

5 6. As described in the Declaration of Michael George, submitted concurrently
6 herewith, the Delta Watermaster authorized the Assistant Deputy Director for Water
7 Rights to issue the WSID Draft CDO and the BBID ACL Complaint.

8 7. The second sentence of Paragraph 3 of the ACL Complaint also contains an
9 error regarding the Executive Director's delegation of authority to issue ACL complaints
10 within the Executive Director's jurisdiction. The Executive Director delegated authority to
11 issue ACL complaints under Water Code section 1055 to the Deputy Director for Water
12 Rights (then known as the Chief, Division of Water Rights) in a memorandum dated May
13 17, 1999. Exhibit A hereto is a true and correct copy of the May 17, 1999 memorandum.
14 The Deputy Director for Water Rights redelegated that authority to the Assistant Deputy
15 Director for Water Rights in a memorandum dated August 27, 2008. Exhibit B hereto is a
16 true and correct copy of the August 27, 2008, memorandum. It is my understanding and
17 belief that these delegations remain in effect.

18 8. It is my understanding and belief that the errors in the Draft CDO and the ACL
19 Complaint do not pertain to material facts or relevant legal issues, and that no party has
20 been prejudiced by these errors. The Board may correct the errors in the Draft CDO
21 should it choose to issue a final CDO. The Division will issue a corrected ACL Complaint
22 if the Hearing Officer so directs.

23 9. Exhibit C hereto is a true and correct copy of Resolution 2012-0048 (2012
24 Delegations to the Delta Watermaster), and can also be found at:
25 [http://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2012/rs2012](http://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2012/rs2012_0048.pdf)
26 [_0048.pdf](http://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2012/rs2012_0048.pdf).

27 10. Exhibit D hereto is a true and correct copy of Resolution 2015-0058 (2015
28 Delegations to the Delta Watermaster), and can also be found at:

1 http://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2015/rs2015
2 [_0058.pdf.](http://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2015/rs2015)

3 11. Following the hearing on WSID's motion for preliminary injunction, on August 3,
4 2015, the Hon. Shellyanne Chang found that the July 15, 2015, Revised Notice does not
5 violate anyone's due process rights and declined to issue a preliminary injunction. Exhibit
6 E is a true and correct copy of the August 3, 2015 Order (Sacramento Superior Court
7 Case No. 34-2015-80002121).

8 12. The Hearing Officer provided BBID with notice of the available hearing
9 procedures on August 19, 2015. Exhibit F is a true and correct copy of the public notice of
10 hearing procedures provided on August 19, 2015 Order, and can also be found at:

11 http://www.waterboards.ca.gov/waterrights/water_issues/programs/hearings/byron_betha
12 [ny/docs/notice_byronbethany.pdf.](http://www.waterboards.ca.gov/waterrights/water_issues/programs/hearings/byron_betha)

13 I declare under penalty of perjury under the laws of the State of California that the
14 foregoing is true and correct.

15 Date: February 22, 2016



16
17 Andrew Tauriainen
18 **OFFICE OF ENFORCEMENT**
19 State Water Resources Control Board
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23
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25
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27
28



Winston H. Hickox
Secretary for
Environmental
Protection

Executive Office
901 P Street • Sacramento, California 95814 • (916) 657-0941
Mailing Address: P.O. Box 100 • Sacramento, California • 95812-0100
FAX (916) 657-0932 • Web Site Address: <http://www.swrcb.ca.gov>

Gray Davis
Governor

MEMORANDUM

TO: Harry M. Schueller, Chief
Division of Water Rights

FROM: 
Walt Pettit
Executive Director
EXECUTIVE OFFICE

DATE: **MAY 17 1999**

SUBJECT: DELEGATION OF AUTHORITY PROVIDED BY WATER CODE
SECTION 1055, SUBDIVISION (A)

- 1.0 Water Code section 1055, subdivision (a) provides that the Executive Director of the State Water Resources Control Board (SWRCB) may issue a complaint to any person on whom administrative civil liability may be imposed pursuant to Section 1052 and Section 5107. The complaint shall allege the act or failure to act that constitutes a trespass or violation, the provision of law authorizing civil liability to be imposed, and the proposed civil liability. The Executive Director is authorized to delegate authority to a deputy or other officer or employee of the SWRCB pursuant to Water Code section 7.
- 2.0 The authority to issue a complaint and impose a civil liability as provided by Water Code section 1055, subdivision (a) is hereby delegated to the Chief, Division of Water Rights. This authority is delegated without restriction; however, the Chief, Division of Water Rights, shall keep the Executive Director and the SWRCB informed of any administrative civil liability complaints that may be highly controversial or that pose a risk of litigation.

Attachment

cc: Board Members
Dale Claypoole
✓ William R. Attwater



Linda S. Adams
Secretary for
Environmental Protection

State Water Resources Control Board

Taurainen Decl. Exh B
Page 1

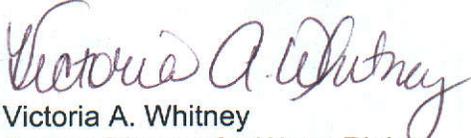


Arnold Schwarzenegg
Governor

Division of Water Rights
1001 I Street, 14th Floor ♦ Sacramento, California 95814 ♦ 916.341.5300
P.O. Box 2000 ♦ Sacramento, California 95812-2000
Fax: 916.341.5400 ♦ www.waterrights.ca.gov

MEMORANDUM

TO: James W. Kassel
Assistant Deputy Director for Water Rights
DIVISION OF WATER RIGHTS

FROM: 
Victoria A. Whitney
Deputy Director for Water Rights
DIVISION OF WATER RIGHTS

DATE: **AUG 27 2008**

SUBJECT: REDELEGATION OF AUTHORITY PROVIDED BY WATER CODE SECTION 1055, SUBDIVISION (A)

Water Code section 1055, subdivision (a) provides that the Executive Director of the State Water Resources Control Board (State Water Board) may issue a complaint to any person on whom administrative civil liability may be imposed pursuant to Section 1052 and section 5107. The complaint shall allege the act or failure to act that constitutes a trespass or violation, the provision of law authorizing civil liability to be imposed, and the proposed civil liability. The Executive Director is authorized to delegate authority to a deputy or other officer or employee of the State Water Board pursuant to Water Code section 7.

By memorandum dated May 17, 1999, the Executive Director delegated to the Deputy Director for Water Rights [then known as Chief of the Division of Water Rights] the authority to issue a complaint and impose a civil liability as provided by Water Code section 1055, subdivision (a). The delegation is without restriction, provided that the Deputy Director for Water Rights shall keep the Executive Director and the State Water Board informed of any administrative civil liability complaints that may be highly controversial or pose a risk of litigation.

The authority to issue an administrative civil liability complaint as provided by Water Code section 1055, subdivision (a) and delegated to the Deputy Director for Water Rights is hereby redelegated to the Assistant Deputy Director for Water Rights. The Assistant Deputy Director for Water Rights shall keep the Deputy Director, the Executive Director and the State Water Board informed of any administrative civil liability complaints that may be highly controversial or that pose a risk of litigation.

cc: (see next page)

James W. Kassel

- 2 -

AUG 27 2008

cc: Dorothy Rice
Executive Director
State Water Board

Thomas Howard
Chief Deputy Director
State Water Board

Michael Lauffer
Chief Counsel
Office of Chief Counsel

Andrew Sawyer
Assistant Chief Counsel
Office of Chief Counsel

**STATE WATER RESOURCES CONTROL BOARD
RESOLUTION NO. 2012-0048**

CHANGES IN THE DELEGATION OF AUTHORITY TO THE DELTA WATERMASTER.

WHEREAS:

1. Pursuant to Water Code section 85230 subdivision (a), the State Water Resources Control Board (Board) appoints a special master for the Delta, whose title is “the Delta Watermaster.”
2. Pursuant to Water Code section 7, the Board is empowered to delegate authority to authorized persons.
3. Water Code section 85230 subdivision (b) provides that the Delta Watermaster shall exercise specified delegated authorities.
4. Water Code Section 85230 subdivision (b) states that the Delta Watermaster’s authority shall be limited to diversions in the Delta, and for the monitoring and enforcement of Board orders and license and permit terms and conditions that apply to conditions in the Delta.
5. Water Code section 85230 subdivision (c) provides that the Board may delegate additional duties to the Delta Watermaster as necessary for effective day-to-day enforcement of its decisions.
6. Water Code section 1051 authorizes the Board to investigate streams, lakes, and other bodies of water.
7. Government Code section 11415.50 states that an adjudicative proceeding is not required for informal fact-finding, an informal investigatory hearing, or a decision to initiate or not initiate an adjudicatory proceeding.
8. Government Code section 11415.60 authorizes the Board to delegate the power to formulate and issue decisions by settlement.
9. On October 5, 2010, the Board adopted [Resolution No. 2010-0048](#) delegating authority to the Delta Watermaster.
10. Resolution 2010-0048 provides that the delegation will be brought back before the Board within two years for reconsideration of its terms.
11. It is appropriate to modify the resolution to delegate authority regarding temporary water right permits and statements of water diversion and use.

THEREFORE BE IT RESOLVED THAT:

1. The Board delegates to the Delta Watermaster the following duties related to water diversion within the Delta and the monitoring and enforcement of Board orders and license and permit terms and conditions that apply to conditions in the Delta, as defined in Water Code section 12220:
 - 1.1 Require monitoring and reporting by holders of Board-issued water right permits or licenses. This authority may be re-delegated to the Deputy Director for Water Rights or other appropriate staff within the Division of Water Rights.
 - 1.2 Issue approvals delegated to an officer or employee of the Board by the terms of water right permits or licenses. This authority may be re-delegated to the Deputy Director for Water Rights or other appropriate staff within the Division of Water Rights.
 - 1.3 Require monitoring and reporting by persons filing statements of water diversion and use pursuant to Water Code sections 5100-5107. This authority may be re-delegated to the Deputy Director for Water Rights or other appropriate staff within the Division of Water Rights.
 - 1.4 Act on petitions or requests to approve or renew temporary permits pursuant to Chapter 6.5 (commencing with section 1425) or temporary urgency changes pursuant to chapter 6.6 (commencing with section 1435) of Part 2 of Division 2 of the Water Code. If no objections to an application for a temporary permit or a petition for a temporary urgency change are received, this authority may be re-delegated to the Deputy Director for Water Rights or appropriate staff within the Division of Water Rights. This delegation includes the authority to:
 - 1.4.1 Hold a hearing on any applications, or petition or request for renewal made pursuant to Chapter 6.5 or 6.6.
 - 1.4.2 Make the findings required by Chapter 6.5 or 6.6 as conditions precedent to the issuance or renewal of a temporary permit or temporary change order.
 - 1.4.3 Make any findings required by CEQA as conditions precedent to the issuance or renewal of a temporary change order.
 - 1.4 At the preadjudicative stage, conduct informal fact-finding or informal investigatory hearings regarding alleged unlawful diversions of water, violations of water right permits or licenses, violations involving statements of water diversion and use, or waste and unreasonable use.
 - 1.5 Issue notices of proposed cease and desist orders, and, when a hearing has not been timely requested, issue cease and desist orders in accordance with Water Code section 1831 et seq.
 - 1.6 Issue proposed administrative civil liability complaints, and, when a hearing has not been requested, issue an order imposing administrative civil liability in accordance with Water Code section 1055 et seq.

- 1.7 Convene settlement conferences up until the time a formal adjudication has commenced by the noticing of a hearing.
 - 1.8 Formulate and issue decisions by settlement under Government Code section 11415.60 in matters raised by investigations or complaints, or where notices of proposed cease and desist orders or administrative civil liability have been issued but a hearing has not been noticed.
 - 1.9 Request the Attorney General to institute appropriate proceedings in the superior court in accordance with Water Code section 1052 (unlawful diversions) or Water Code section 1845 (violation of cease and desist orders).
2. Adjudicative orders and decisions issued by the Delta Watermaster, including but not limited to decisions by settlement, are subject to reconsideration by the Board pursuant to Water Code section 1122 et seq.
 3. The enumeration of delegated authorities in this resolution shall not be interpreted as revoking authorities already delegated, except as specified below. This resolution augments [Resolution No. 2012-0029](#), Delegation of Authority to State Water Resources Control Board Members Individually and to the Deputy Director for Water Rights, and supersedes it only to the extent of any inconsistency. Specifically, the delegation to the Deputy Director to issue notices of proposed cease and desist orders and administrative civil liability complaints is revoked as applied to diversions in the Delta and enforcement of Board orders and license and permit terms and conditions that apply to conditions in the Delta, except to the extent the Delta Watermaster expressly authorizes the Deputy Director for Water Rights or appropriate staff within the Division of Water Rights to proceed.
 4. This resolution supersedes Resolution 2010-0048.
 5. This resolution will be brought back before the Board within two years for reconsideration of its terms.

CERTIFICATION

The undersigned, Clerk to the Board, does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the State Water Resources Control Board held on October 3, 2012.

AYE: Chairman Charles R. Hoppin
Vice Chair Frances Spivy-Weber
Board Member Steven Moore
Board Member Felicia Marcus

NAY: None

ABSENT: Board Member Tam M. Doduc

ABSTAIN: None



Jeanine Townsend
Clerk to the Board

**STATE WATER RESOURCES CONTROL BOARD
RESOLUTION NO. 2015-0058**

DELEGATION OF AUTHORITY TO THE DELTA WATERMASTER.

WHEREAS:

1. Pursuant to Water Code section 85230 subdivision (a), the State Water Resources Control Board (Board) appoints a special master for the Delta, whose title is “the Delta Watermaster.”
2. Pursuant to Water Code section 7, the Board is empowered to delegate authority to authorized persons.
3. Water Code section 85230 subdivision (b) provides that the Delta Watermaster shall exercise specified delegated authorities.
4. Water Code Section 85230 subdivision (b) states that the Delta Watermaster’s authority shall be limited to diversions in the Delta, and for the monitoring and enforcement of Board orders and license and permit terms and conditions that apply to conditions in the Delta.
5. Water Code section 85230 subdivision (c) provides that the Board may delegate additional duties to the Delta Watermaster as necessary for effective day-to-day enforcement of its decisions.
6. Water Code section 1051 authorizes the Board to investigate streams, lakes, and other bodies of water.
7. Government Code section 11415.50 states that an adjudicative proceeding is not required for informal fact-finding, an informal investigatory hearing, or a decision to initiate or not initiate an adjudicatory proceeding.
8. Government Code section 11415.60 authorizes the Board to delegate the power to formulate and issue decisions by settlement.
9. On October 5, 2010, the Board adopted [Resolution No. 2010-0048](#) delegating authority to the Delta Watermaster.
10. On October 3, 2012, the Board adopted [Resolution No. 2012-0048](#) making specified changes in the delegation of authority to the Delta Watermaster.
11. Both Resolution No. 2010-0048 and Resolution No. 2012-0048 provide that the delegation will be brought back before the Board within two years for reconsideration of its terms.

12. Upon reconsideration, the Board finds that It is appropriate to further modify the terms of the delegation by making the delegation evergreen, subject to the Board's prerogative to reconsider its terms on its own motion or at the request of the Delta Watermaster.

THEREFORE BE IT RESOLVED THAT:

1. The Board delegates to the Delta Watermaster the following duties related to water diversion within the Delta and the monitoring and enforcement of Board orders and license and permit terms and conditions that apply to conditions in the Delta, as defined in Water Code section 12220:
 - 1.1 Require monitoring and reporting by holders of Board-issued water right permits or licenses. This authority may be re-delegated to the Deputy Director for Water Rights or other appropriate staff within the Division of Water Rights.
 - 1.2 Issue approvals delegated to an officer or employee of the Board by the terms of water right permits or licenses. This authority may be re-delegated to the Deputy Director for Water Rights or other appropriate staff within the Division of Water Rights.
 - 1.3 Require monitoring and reporting by persons filing statements of water diversion and use pursuant to Water Code sections 5100-5107. This authority may be re-delegated to the Deputy Director for Water Rights or other appropriate staff within the Division of Water Rights.
 - 1.4 Act on petitions or requests to approve or renew temporary permits pursuant to Chapter 6.5 (commencing with section 1425) or temporary urgency changes pursuant to chapter 6.6 (commencing with section 1435) of Part 2 of Division 2 of the Water Code. If no objections to an application for a temporary permit or a petition for a temporary urgency change are received, this authority may be re-delegated to the Deputy Director for Water Rights or appropriate staff within the Division of Water Rights. This delegation includes the authority to:
 - 1.4.1 Hold a hearing on any applications, or petition or request for renewal made pursuant to Chapter 6.5 or 6.6.
 - 1.4.2 Make the findings required by Chapter 6.5 or 6.6 as conditions precedent to the issuance or renewal of a temporary permit or temporary change order.
 - 1.4.3 Make any findings required by CEQA as conditions precedent to the issuance or renewal of a temporary change order.

- 1.5 At the preadjudicative stage, conduct informal fact-finding or informal investigatory hearings regarding alleged unlawful diversions of water, violations of water right permits or licenses, violations involving statements of water diversion and use, or waste and unreasonable use.
 - 1.6 Issue notices of proposed cease and desist orders, and, when a hearing has not been timely requested, issue cease and desist orders in accordance with Water Code section 1831 et seq. This authority may be re-delegated to the Deputy Director for Water Rights or appropriate staff within the Division of Water Rights
 - 1.7 Issue proposed administrative civil liability complaints, and, when a hearing has not been requested, issue an order imposing administrative civil liability in accordance with Water Code section 1055 et seq. This authority may be re-delegated to the Deputy Director for Water Rights or appropriate staff within the Division of Water Rights
 - 1.8 Convene settlement conferences up until the time a formal adjudication has commenced by the noticing of a hearing.
 - 1.9 Formulate and issue decisions by settlement under Government Code section 11415.60 in matters raised by investigations or complaints, or where notices of proposed cease and desist orders or administrative civil liability have been issued but a hearing has not been noticed.
 - 1.10 Request the Attorney General to institute appropriate proceedings in the superior court in accordance with Water Code section 1052 (unlawful diversions) or Water Code section 1845 (violation of cease and desist orders).
2. Adjudicative orders and decisions issued by the Delta Watermaster, including but not limited to decisions by settlement, are subject to reconsideration by the Board pursuant to Water Code section 1122 et seq.
 3. The enumeration of delegated authorities in this resolution shall not be interpreted as revoking authorities already delegated, except as specified below. This resolution augments [Resolution No. 2012-0029](#), Delegation of Authority to State Water Resources Control Board Members Individually and to the Deputy Director for Water Rights, and supersedes it only to the extent of any inconsistency. Specifically, the delegation to the Deputy Director to issue notices of proposed cease and desist orders and administrative civil liability complaints is revoked as applied to diversions in the Delta and enforcement of Board orders and license and permit terms and conditions that apply to conditions in the Delta, except to the extent the Delta Watermaster expressly authorizes the Deputy Director for Water Rights or appropriate staff within the Division of Water Rights to proceed.

4. This resolution supersedes Resolution No. 2012-0048.
5. This resolution will remain in effect until withdrawn or superseded by action of the Board.

CERTIFICATION

The undersigned, Clerk to the Board, does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the State Water Resources Control Board held on September 1, 2015.

AYE: Chair Felicia Marcus
Vice Chair Frances Spivy-Weber
Board Member Steven Moore

NAY: None

ABSENT: Board Member Tam M. Doduc
Board Member Dorene D'Adamo

ABSTAIN: None



for Jeanine Townsend
Clerk to the Board

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO

DATE:	August 3, 2015	DEPT. NO.:	24
JUDGE:	HON. SHELLEYANNE W. L. CHANG	CLERK:	E. HIGGINBOTHAM
<p>THE WEST SIDE IRRIGATION DISTRICT; CENTRAL DELTA WATER AGENCY; SOUTH DELTA WATER AGENCY; WOODS IRRIGATION COMPANY,</p> <p style="text-align: center;">Petitioners and Plaintiffs,</p> <p>v.</p> <p>CALIFORNIA STATE WATER RESOURCES CONTROL BOARD; THOMAS HOWARD, EXECUTIVE DIRECTOR OF CALIFORNIA STATE WATER RESOURCES CONTROL BOARD; and DOES 1 THROUGH 100, INCLUSIVE,</p> <p style="text-align: center;">Respondents and Defendants.</p>		<p>Case No.: 34-2015-80002121</p>	
Nature of Proceedings:		ORDER AFTER HEARING ON ORDER TO SHOW CAUSE RE: PRELIMINARY INJUNCTION	

This matter came before the Court pursuant to an ex parte application by the West Side Irrigation District, Central Delta Water Agency, and South Delta Water Agency on July 10, 2015. The ex parte application sought a stay or a temporary restraining order/order to show cause concerning the May 1, 2015 and June 12, 2015, “NOTICE OF UNAVAILABILITY OF WATER AND NEED FOR IMMEDIATE CURTAILMENT...”¹ (hereinafter referred to as the “May Curtailment Letter” and the “June Curtailment Letter”, jointly referred to as the “Curtailment Letters”) issued by the State Water Resources Control Board through its Executive Director Thomas Howard.

In its ruling granting the Temporary Restraining Order against Respondents, the Court determined that the 2015 Curtailment Letters were coercive in nature and went beyond the “informational” purpose the Board claimed prevented a stay. As in *Duarte*, even though the Curtailment Letters were not enforceable on their own and there were no separate penalties for violating them, the language used in the Curtailment Letters resulted in a “comman[d] by the...[g]overnment to stop [water diverting] activities.” (*Duarte Nursery, Inc. v. United States Army Corps of Engineers* (2014) 17 F.Supp.3d 1013, 1018.) It was not a suggestion for “voluntary cessation of activities,” but instead required Petitioners to “immediately stop diverting water.” (*Id.* at 1019; Pet. exh. B.)

¹ This language is from the heading of the June 1, 2015 letter. The May 1, 2015 letter is titled, “NOTICE OF UNAVAILABILITY OF WATER AND IMMEDIATE CURTAILMENT...”

The Curtailment Letters also required recipients to “document receipt of this notice by completing an online Curtailment Certification Form (Form) within seven days. The Form confirms your cessation of diversion under the specific pre-1914 claim of right. Completion of the Form is mandatory...” Nowhere in this language did the Curtailment Letters assert that Petitioners were free to ignore the directive that they cease diverting water or that it is merely a suggestion.²

The Court granted the ex parte application for a temporary restraining order and issued an order to show cause as to why a preliminary injunction should not issue requiring the Board to issue a revised letter/notice that was informational in nature. The matter was set for an order to show cause on July 30, 2015 at 9:00 a.m. in Department 24.

On July 15, 2015, after the Temporary Restraining Order issued, Respondents issued a “PARTIAL RESCISSION OF APRIL, MAY AND JUNE 2015 CURTAILMENT NOTICES AND CLARIFICATION OF STATE BOARD POSITION RE: NOTICE OF UNAVAILABILITY OF WATER FOR THOSE DIVERTING WATER IN THE SACRAMENTO RIVER WATERSHED, SAN JOAQUIN RIVER WATERSHED AND DELTA, AND SCOTT RIVER.” (RJN, Exh. A.) (“July Letter”). All Petitioners acknowledge that they received a copy of this letter, which provides that it applies to, among others, both the May Curtailment Letter and the June Curtailment Letter.

On July 16, 2015, Respondents filed a supplemental opposition, request for judicial notice, and evidentiary objections. On July 23, 2015, Petitioners filed a reply to Respondents’ opposition and opposition to evidentiary objections. The hearing on the order to show cause was held on July 30, 2015.

Petitioners did not file any opposition to Respondents’ request for judicial notice. The Court has reviewed the request and **GRANTS** it with respect to Exhibit A. A copy of Exhibit B was not provided to the Court, merely a link to a website. The Court declines to take judicial notice of this document.

In its Supplemental Opposition, respondents argued that the matter was now moot in light of the July Letter and that no preliminary injunction should issue. Petitioners asserted that the coercive language was still present in the July Letter and that respondents had not corrected the offending language. The Court has reviewed the July Letter and finds that Respondent has removed the coercive language that was in the Curtailment Letters. The July Letter specifies that, “[t]his notice does not establish or impose any compliance responsibilities. Non-compliance with this notice shall not constitute a basis for the State Water Board’s initiation of any enforcement action.” Further, “you are not required to complete and file the Curtailment Certification Form (Form) attached to the prior notices.”

² This is similar to *Phelps v. State Water Resources Control Board* (2007) 157 Cal.App.4th 89, where the Court held plaintiffs were aggrieved by a curtailment notice within the meaning of section 1126(b) because it “required plaintiffs to immediately discontinue diversion of water under their licenses.” Although *Phelps* involved only one notice, the implication of the language of the letters was the same as in this case.

The Court finds the July Letter is now akin to the notice of violation sent by the Central Valley Regional Water Quality Control Board in *Duarte*. There, the notice informed plaintiffs of the Board's view that they were in violation of the law, but did not require them to stop engaging in any activity. (*Duarte*, 17 F.Supp.3d at 1025.) The notice did command the plaintiffs to submit a plan to mitigate the impacts of the alleged improper discharges, but did not threaten any consequences for failure to submit such a plan. (*Id.*) The Court in *Duarte* found this was a purely informational notice, and consequently no taking had occurred in violation of due process so as to make necessary a lawsuit against the Board ripe for adjudication. (*Id.*)

Here, the July Letter no longer requires recipients to cease diverting water or requires them to sign a curtailment certification form under penalty of perjury. While the July Letter does notify the recipient that the Board has information indicating that there is insufficient water available for their water right priority, such a determination, in and of itself, does not violate Due Process principles, as the July Letter makes no assessment of the recipient's legal status in light of such a determination and no longer commands the recipient to take any action. As in *Duarte*, this assessment is not sufficient to violate Due Process principles. While the Court agrees with Petitioner that it would have been more prudent to rescind the Curtailment Letters in full and issue a new informational notice (instead of a "partial rescission"), it is not for the Court to dictate how the Board should exercise its discretion.

At oral argument, Petitioners asserted that the language contained in the last paragraph on the first page of the July Letter still contained the offending language and a coercive element. Petitioners asserted that no recipient argued or understood the Curtailment Letters to be orders and because of this, the language stating "to the extent that any of the notices described above contain language that may be construed as an order requiring you to stop diversions under your affected water right, that language is hereby rescinded" was a nullity and that the July letter rescinded nothing as there was no order. But the basis for the Court's granting the TRO was that, in fact, a recipient of the Curtailment Letters *could* reasonably interpret them as an order from the Government compelling them to stop their curtailment activities. ["...the language used in the Curtailment Letters results in a command by the government to stop water diverting activities... It is not a suggestion for voluntary cessation of activities but instead requires Petitioners to immediately stop diverting water." [Internal quotes and citations omitted.] "Through the inclusion of this specific information, the Curtailment Letters appear not to be generalized notices, but instead a specific adjudication and command with respect to the particular rights holder." "...The focus is not on whether the Petitioners' legal exposure remains unchanged or not, but whether the Curtailment Letters could reasonably be interpreted to be an order or command by the government, not merely a suggestion or request for voluntary cessation of activities." (Order After Hearing on Ex Parte Application For Temporary Stay.)]

The July Letter now rescinds this language of command that the Court found violated Petitioners' Due Process Rights. Again, it is not for this Court to second guess the Board and decide exactly how it should have rescinded the Curtailment Letters.

Petitioner West Side Irrigation District further asserts that Respondents have initiated a retaliatory action against them in the form of a draft Cease and Desist Order and Information Order. (Declaration of Karna E. Harrigfeld (hereinafter "Harrigfeld Decl."), Exh. C.) West Side Irrigation District contends the Cease and Desist Order improperly relies on the May Curtailment Letter, and the information provided by West Side in response to the Curtailment Certification Form, in contravention of this Court's ruling.

The issue of whether issuance of the Cease and Desist Order and Information Order violated the Court's Temporary Restraining Order or is in retaliation for this lawsuit is not properly before the Court at this time. The only issue before the Court at the Order To Show Cause hearing was whether a preliminary injunction should issue requiring the Board to issue a revised letter/notice that is informational in nature. Further, to the extent Petitioners urge the Court to exceed this scope, the Court declines to do so. A full administrative hearing with the opportunity for both sides to present evidence challenging the propriety of the Cease and Desist Order and Information Order and whether the Curtailment Certificates were improperly used as a basis for Respondents' enforcement actions against these Petitioners and subsequent judicial review of a fully developed record and the administrative determination is the appropriate procedure.

Respondents have acknowledged that Petitioners may challenge the use of the subject information as part of the administrative process, should they request a hearing. The Court thereby exercises its discretion to allow the issue of the propriety of the Cease and Desist Order and Information Order to be adjudicated through the administrative process prior to any judicial review by this Court.

Having considered the evidence and arguments presented by the parties, the Court determines there is no cause to issue a preliminary injunction.³ Consequently, the application for preliminary injunction is **DENIED**.

Counsel for Respondents to submit a formal order for the Court's signature pursuant to CRC 3.1312.

³ In light of this determination, the evidentiary objections filed by Respondents are moot, and the Court declines to rule on them.

Declaration of Mailing

I hereby certify that I am not a party to the within action and that I deposited a copy of this document in sealed envelopes with first class postage prepaid, addressed to each party or the attorney of record in the U.S. Mail at 720 Ninth Street, Sacramento, California.

Dated: August 4, 2015

E. Higginbotham, Deputy Clerk /s/ E. Higginbotham



Steve Herum
Jeanne Zolezzi
Herum\Crabtree\Suntag
5757 Pacific Ave., Ste. 222
Stockton, CA 95207

Jennifer Spaletta
Spaletta Law PC
P.O. Box 2660
Lodi, CA 95241

Dean Ruiz
3439 Brookside Rd., Ste. 210
Stockton, CA 95219

Clifford Lee
Matthew Bullock
Department of Justice
Office of the Attorney General
455 Golden Gate Ave., Ste. 11000
San Francisco, CA 94102

State Water Resources Control Board

NOTICE OF PUBLIC HEARING and PRE-HEARING CONFERENCE

The State Water Resources Control Board will hold a Public Hearing to determine whether to impose Administrative Civil Liability against

Byron-Bethany Irrigation District

**Intake Channel to the Banks Pumping Plant (formerly Italian Slough)
Contra Costa County**

The **Pre-Hearing Conference**
will commence on
Friday, September 25, 2015
at **9:00 a.m.**

in the Sierra Hearing Room
Joe Serna Jr.-CalEPA Building
1001 I Street, Second Floor
Sacramento, CA

The **Public Hearing** will commence on
Wednesday, October 28, 2015 and continue, if necessary,
on October 29 and 30, 2015
at **9:00 a.m.**

in the Coastal Hearing Room
Joe Serna Jr.-CalEPA Building
1001 I Street, Second Floor
Sacramento, CA

PURPOSE OF HEARING

The purpose of this hearing is for the State Water Resources Control Board (State Water Board or Board) to receive evidence relevant to determining whether to impose administrative civil liability against the Bryon-Bethany Irrigation District (BBID) for alleged unauthorized diversion of water and, if so, whether in the amount of \$1,553,250 or some other amount.

FELICIA MARCUS, CHAIR | THOMAS HOWARD, EXECUTIVE DIRECTOR

BACKGROUND

Water Code section section 1052, subdivision (a), which provides that the diversion or use of water subject to Division 2 of the Water Code other than as authorized in Division 2 is a trespass. The State Water Board may administratively impose civil liability in an amount not to exceed \$500 for each day that a trespass occurs. (Wat. Code, § 1052, subd. (b).) Fines can go up to \$10,000 for each day a trespass occurs in certain critically dry years. (See Wat.Code § 1845, subd. (b)(1)(A).)

Water Code section 1052, subdivision (c), provides that any person or entity committing a trespass during a period for which the Governor has issued a proclamation of a state of drought emergency may be liable in an amount not to exceed the sum of one thousand dollars (\$1,000) for each day the trespass occurs plus two thousand five hundred dollars (\$2,500) for each acre-foot of water diverted or used in excess of that diverter's rights. A trespass is the unauthorized diversion or use of water, as defined in Water Code section 1052, subdivision (a).

Water Code section 1052, subdivision (d)(2), provides that civil liability may be imposed administratively by the State Water Board pursuant to Water Code section 1055.

On July 20, 2015, the Assistant Deputy Director of the Division of Water Rights (Assistant Deputy Director) issued an [administrative civil liability complaint \(complaint\)](#) alleging that BBID committed a trespass through the unauthorized diversion of water in violation of Water Code section 1052, subdivision (a). The complaint proposes that liability be imposed upon BBID in the amount of **\$1,553,250**.

By letter dated August 6, 2015, BBID [requested a hearing](#) on the complaint.

This notice, the complaint, and other material related to this hearing can be found on the Division's website at:

http://www.waterboards.ca.gov/waterrights/water_issues/programs/hearings/byron_bethany/index.shtml

KEY ISSUES

In determining the amount of civil liability, the Board must take into consideration all relevant circumstances (Wat. Code, § 1055.3) The hearing will address the following key issues:

- 1) Whether the State Water Board should impose administrative civil liability upon BBID for trespass and, if so, in what amount and on what basis;
 - a. What is the extent of harm caused by BBID's alleged unauthorized diversions?
 - b. What is the nature and persistence of the alleged violation?
 - c. What is the length of time over which the alleged violation occurred?
 - d. What corrective actions, if any, have been taken by BBID?
- 2) What other relevant circumstances should be considered by the State Water Board in determining the amount of any civil liability?

HEARING OFFICER AND HEARING TEAM

State Water Board Member Tam Doduc will preside as the hearing officer for this proceeding. A hearing team will assist the hearing officer by providing legal and technical advice. The hearing team members will be: Nicole Kuenzi, Staff Counsel; Jane Farwell-Jensen, Environmental Scientist; and Ernest Mona, Water Resource Engineer. The hearing team and their supervisors will assist the hearing officer and other members of the State Water Board throughout this proceeding.

SEPARATION OF FUNCTIONS

A staff prosecution team will be a party to this hearing. State Water Board prosecution team members will include: Andrew Tauriainen, Attorney III, Office of Enforcement and Kathy Mrowka, Manager, Enforcement Section.

The prosecution team is separated from the hearing team and is prohibited from having *ex parte* communications with any members of the State Water Board and any members of the hearing team regarding substantive issues and controversial procedural issues within the scope of this proceeding. This separation of functions also applies to the supervisors of each team. (Gov. Code, §§ 11430.10-11430.80.)

HEARING PARTICIPATION

IF YOU WANT TO TAKE PART IN THIS HEARING, you should carefully read the enclosure entitled "Information Concerning Appearance at Water Right Hearings." As stated in that enclosure, anyone wishing to present evidence at the hearing must submit a **Notice of Intent to Appear**, which must be **received** by the State Water Board no later than the deadline listed below. **If BBID fails to submit a Notice of Intent to Appear by the deadline specified in this notice, the State Water Board will deem the request for a hearing regarding the imposition of administrative civil liability to be withdrawn, and the Board may impose administrative civil liability in the amount of \$1,553,250 without further notice. Similarly, if BBID withdraws its request, administrative civil liability may be imposed without further notice.**

Within one week after the deadline to submit Notices of Intent to Appear, the State Water Board will mail out a list of those who desire to participate in the hearing and a copy of all Notices of Intent to Appear that the Board timely received. The list is provided in order to facilitate exchange of written testimony, exhibits, and witness qualifications in advance of the hearing. Only parties and other participants who are authorized by the hearing officer will be allowed to present evidence. Copies of witnesses' proposed **testimony, exhibits, lists of exhibits, qualifications, and statement of service** must be **received** by the State Water Board and served on each of the parties who have indicated their intent to appear, no later than the deadline listed below.

12:00 noon, Wednesday, September 2, 2015

Deadline for receipt of Notice of Intent to Appear.

12:00 noon, Monday, October 12, 2015

Deadline for receipt and service of witnesses' proposed testimony, exhibits, lists of exhibits, qualifications, and statement of service.

PRE-HEARING CONFERENCE

The hearing officer will conduct a pre-hearing conference to discuss the scope of the hearing and any other procedural issues on **Friday, September 25, 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, the hearing officer may, at her discretion, modify the hearing procedures or issues set forth in this 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.

SUBMITTALS TO THE STATE WATER BOARD

All documents, including Notices of Intent to Appear, written testimony, and other exhibits submitted to the State Water Board should be addressed as follows:

Division of Water Rights
State Water Resources Control Board
Attention: Jane Farwell-Jensen

By Mail: P.O. Box 2000, Sacramento, CA 95812-2000
By Hand Delivery: Joe Serna Jr.-CalEPA Building
1001 I Street, 2nd Floor, Sacramento, CA 95814
By Fax: (916) 341-5400
By Email: wrhearing@waterboards.ca.gov
With Subject of "**BBID ACL Hearing**"

ALL HAND DELIVERED SUBMITTALS should be Date and Time stamped by the Division of Water Rights' Records Unit on the second (2nd) floor of the Joe Serna Jr.-CalEPA Building at the above address prior to or at the submittal deadline. Persons delivering submittals must first check in with lobby security personnel on the first floor. Hand delivered submittals that do not have a timely Date and Time stamp by the Division of Water Rights' Records Unit will be considered late and may not be accepted by the hearing officer.

SETTLEMENTS

Please read the discussion of "Settlements" in the enclosure entitled "Information Concerning Appearance at Water Right Hearings." In this water rights enforcement hearing, the prosecution team is prosecuting BBID for an alleged violation. The prosecution team and BBID may, at their discretion, engage in private settlement discussions and may include any other persons in those discussions. Due to the separation of functions discussed above, **the hearing team cannot participate** in settlement discussions. Should the parties reach settlement, they must notify the hearing team as soon as possible.

IF YOU HAVE ANY QUESTIONS

During the pendency of this proceeding, there shall be no *ex parte* communications regarding substantive or controversial procedural matters within the scope of the proceeding between State Water Board members or hearing team members and any of the other participants, including members of the prosecution team. (Gov. Code, §§ 11430.10-11430.80.) 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 Jane Farwell-Jensen at (916) 341-5349 or by email to Jane.Farwell-Jensen@waterboards.ca.gov. (Gov. Code, § 11430.20, subd. (b).)

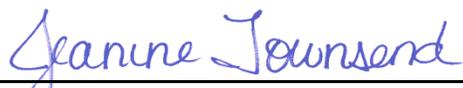
PARKING, ACCESSIBILITY AND SECURITY

The Joe Serna Jr.-CalEPA Building (CalEPA Building) is accessible to people with disabilities. Individuals who require special accommodations at the CalEPA Building are requested to contact Tanya Cole, Equal Employment Opportunity Office, at (916) 341-5880.

Due to enhanced security precautions at the CalEPA Building, all visitors are required to register with security staff prior to attending any meeting. To sign in and receive a visitor's badge, visitors must go to the Visitor and Environmental Services Center, located just inside and to the left of the building's public entrance. Depending on their destination and the building's security level, visitors may be asked to show valid picture identification. Valid picture identification can take the form of a current driver's license, military identification card, or state or federal identification card. Depending on the size and number of meetings scheduled on any given day, the security check-in could take up to fifteen minutes. Please allow adequate time to sign in before being directed to the hearing.

August 19, 2015

Date



Jeanine Townsend
Clerk to the Board

Enclosures

INFORMATION CONCERNING APPEARANCE AT WATER RIGHT HEARINGS

The following procedural requirements will apply and will be strictly enforced:

- 1. HEARING PROCEDURES GENERALLY:** The hearing will be conducted in accordance with the procedures for hearings set forth at California Code of Regulations, title 23, sections 648-648.8, 649.6 and 760, as they currently exist or may be amended. A copy of the current regulations and the underlying statutes governing adjudicative proceedings before the State Water Board is available upon request or may be viewed at the State Water Board's web site: http://www.waterboards.ca.gov/laws_regulations

Unless otherwise determined by the hearing officers, each party may make an opening statement, call and examine witnesses, introduce exhibits, cross-examine opposing witnesses on any matter relevant to the issues even if that matter was not covered in the direct examination, impeach any witness, rebut adverse evidence, and subpoena, call and examine an adverse party or witness as if under cross-examination. At the discretion of the hearing officers, parties may also be afforded the opportunity to present closing statements or submit briefs. The State Water Board encourages parties with common interests to work together to make the hearing process more efficient. The hearing officers reserve the right to issue further rulings clarifying or limiting the rights of any party where authorized under applicable statutes and regulations.

Parties must file any requests for exceptions to procedural requirements in writing with the State Water Board and must serve such requests on the other parties. To provide time for parties to respond, the hearing officers will rule on procedural requests filed in writing no sooner than fifteen days after receiving the request, unless an earlier ruling is necessary to avoid disrupting the hearing.

- 2. SETTLEMENTS:** In water right enforcement hearings, a State Water Board staff member or team prosecutes an alleged violation. In such enforcement cases, the prosecution and a party who is the subject of the proposed enforcement action may at their discretion engage in private settlement discussions, or may include any other persons in those discussions. Although other persons may be authorized to participate in the hearing as parties, such a designation does not constitute a ruling that those persons must be allowed to engage in any settlement discussions between the prosecution and the party against whom the agency action is directed. The consent of other parties is not required before the State Water Board, or the Executive Director under State Water Board [Resolution No. 2012-0061](#), can approve a proposed settlement agreement between the prosecution and a party subject to a proposed enforcement action. However, all parties will be given the opportunity to comment on any settlement submitted to the State Water Board or the Executive Director for approval.

In non-enforcement hearings involving an unresolved protest between a protestant and a water right applicant or petitioner, those persons will be designated as parties in the hearing. (Cal. Code Regs., tit. 23, § 648.1, subd. (b).) Other persons who file a Notice of Intent to Appear in the hearing, may also be designated as parties. In such cases, the parties whose dispute originates the action may at their discretion meet privately to engage in settlement discussions, or may include other persons. If the original parties resolve the dispute, the hearing officers will determine whether or not to continue the hearing, after allowing all remaining parties the opportunity to comment on any proposed settlement. The Executive Director or the State Water Board may approve a settlement in the absence of a hearing, notwithstanding the lack of consent of parties besides the protestant and the applicant or petitioner.

3. **PARTIES:** The current parties to the hearing are **Byron-Bethany Irrigation District; and the prosecution team for the State Water Board**. Additional parties may be designated in accordance with the procedures for this hearing. Except as may be decided by specific rulings of the hearing officers, any person or entity who timely files a Notice of Intent to Appear indicating the desire to participate beyond presenting a policy statement shall be designated as a party. The hearing officers may impose limitations on a party's participation. (Gov. Code, § 11440.50, subd. (c).) Persons or entities who do not file a timely Notice of Intent to Appear may be designated as parties at the discretion of the hearing officers, for good cause shown, and subject to appropriate conditions as determined by the hearing officers. Except as specifically provided in this notice or by ruling of the hearing officers, only parties will be allowed to present evidence.
4. **INTERESTED PERSONS:** Pursuant to California Code of Regulations, title 23, section 648.1, subdivision (d), the State Water Board will provide an opportunity for presentation of non-evidentiary policy statements or comments by interested persons who are not designated as parties. A person or entity that appears and presents only a policy statement is not a party and will not be allowed to make objections, offer evidence, conduct cross-examination, make legal argument or otherwise participate in the evidentiary hearing. Interested persons will not be added to the service list and will not receive copies of written testimony or exhibits from the parties, but may access hearing documents at the website listed in the hearing notice.

Policy statements are subject to the following provisions in addition to the requirements outlined in regulation. (Cal. Code Regs., tit. 23, § 648.1, subd. (d).)

- a. Policy statements are not subject to the pre-hearing requirements for testimony or exhibits, except that interested persons are requested to file a Notice of Intent to Appear, indicating clearly an intent to make a policy statement only.
 - b. The State Water Board requests that policy statements be provided in writing before they are presented. Please see section 7, for details regarding electronic submittal of policy statements.
5. **NOTICE OF INTENT TO APPEAR:** Persons and entities who seek to participate as parties in this hearing must file either an electronic copy or a paper copy of a Notice of Intent to Appear, which must be **received** by the State Water Board no later than **the deadline prescribed in the Hearing Notice**. Failure to submit a Notice of Intent to Appear in a timely manner may be interpreted by the State Water Board as intent not to appear. **If BBID fails to submit a Notice of Intent to Appear by the deadline specified in this notice, the State Water Board will deem the request for a hearing regarding the administrative civil liability complaint to be withdrawn, and administrative civil liability may be imposed without further notice. Similarly, if BBID withdraws its request, administrative civil liability may be imposed without further notice.**

Any faxed or emailed Notices of Intent to Appear must be followed by a mailed or delivered hard copy with an original signature.

Interested persons who will not be participating as parties, but instead presenting only non-evidentiary policy statements should also file a Notice of Intent to Appear.

The Notice of Intent to Appear must state the name and address of the participant. Except for interested persons who will not be participating as parties, the Notice of Intent to Appear must also include: (1) the name of each witness who will testify on the party's behalf;

(2) a brief description of each witness' proposed testimony; and (3) an estimate of the time (not to exceed the total time limit for oral testimony described in section 9, below) that the witness will need to present a brief oral summary of his or her prior-submitted written testimony. (See section 6, below.) Parties who do not intend to present a case-in-chief but wish to cross-examine witnesses or present rebuttal should so indicate on the Notice of Intent to Appear.¹ Parties who decide not to present a case-in-chief after having submitted a Notice of Intent to Appear should notify the State Water Board and the other parties as soon as possible.

Parties who are not willing to accept electronic service of hearing documents should check the appropriate box on the Notice of Intent to Appear. (See section 7, below.)

The State Water Board will mail a service list of parties to each person who has submitted a Notice of Intent to Appear. The service list will indicate if any party is unwilling to accept electronic service. If there is any change in the hearing schedule, only those parties on the service list, and interested persons that have filed a Notice of Intent to Appear expressing their intent to present a policy statement only, will be informed of the change.

- 6. WRITTEN TESTIMONY AND OTHER EXHIBITS:** Exhibits include written testimony, statements of qualifications of expert witnesses, and other documents to be used as evidence. Each party proposing to present testimony on factual or other evidentiary matters at the hearing shall submit such testimony in writing.² Written testimony shall be designated as an exhibit, and must be submitted with the other exhibits. Oral testimony that goes beyond the scope of the written testimony may be excluded. A party who proposes to offer expert testimony must submit an exhibit containing a statement of the expert witness's qualifications.

Each party shall submit to the State Water Board **three (3) paper copies** and **one electronic copy** of each of its exhibits. With its exhibits, each party must submit a completed Exhibit Identification Index. Each party shall also serve a copy of each exhibit and the exhibit index on every party on the service list. A statement of service with manner of service indicated shall be filed with each party's exhibits.

The exhibits and indexes for this hearing, and a statement of service, must be **received by the State Water Board and served on the other parties no later than the deadline prescribed in the Hearing Notice**. The State Water Board may interpret failure to timely submit such documents as a waiver of party status.

All hearing documents that are timely received will be posted on the hearings program webpage identified in the hearing notice.

The following requirements apply to exhibits:

- a. Exhibits based on technical studies or models shall be accompanied by sufficient information to clearly identify and explain the logic, assumptions, development, and operation of the studies or models.

¹ A party is not required to present evidence as part of a case-in-chief. Parties not presenting evidence as part of a case-in-chief will be allowed to participate through opening statements, cross-examination, and rebuttal, and may also present closing statements or briefs, if the hearing officers allow these in the hearing.

² The hearing officers may make an exception to this rule if the witness is adverse to the party presenting the testimony and is willing to testify only in response to a subpoena or alternative arrangement.

- b. The hearing officers have discretion to receive into evidence by reference relevant, otherwise admissible, public records of the State Water Board and documents or other evidence that have been prepared and published by a public agency, provided that the original or a copy was in the possession of the State Water Board before the notice of the hearing is issued. (Cal. Code Regs., tit. 23, § 648.3.) A party offering an exhibit by reference shall advise the other parties and the State Water Board of the titles of the documents, the particular portions, including page and paragraph numbers, on which the party relies, the nature of the contents, the purpose for which the exhibit will be used when offered in evidence, and the specific file folder or other exact location in the State Water Board's files where the document may be found.
- c. A party seeking to enter in evidence as an exhibit a voluminous document or database may so advise the other parties prior to the filing date for exhibits, and may ask them to respond if they wish to have a copy of the exhibit. If a party waives the opportunity to obtain a copy of the exhibit, the party sponsoring the exhibit will not be required to provide a copy to the waiving party. Additionally, with the permission of the hearing officers, such exhibits may be submitted to the State Water Board solely in electronic form, using a file format readable by Microsoft Office 2003 software.
- d. Exhibits that rely on unpublished technical documents will be excluded unless the unpublished technical documents are admitted as exhibits.
- e. Parties submitting large format exhibits such as maps, charts, and other graphics shall provide the original for the hearing record in a form that can be folded to 8 ½ x 11 inches. Alternatively, parties may supply, for the hearing record, a reduced copy of a large format original if it is readable.

- 7. ELECTRONIC SUBMISSIONS:** To expedite the exchange of information, reduce paper use, and lower the cost of participating in the hearing, participants are encouraged to submit hearing documents to the State Water Board in electronic form and parties are encouraged to agree to electronic service.

Any documents submitted or served electronically must be in Adobe Portable Document Format (PDF), except for Exhibit Identification Indexes, which may be in a format supported by Microsoft Excel or Word. Electronic submittals to the State Water Board of documents less than 11 megabytes in total size (incoming mail server attachment limitation) may be sent via electronic mail to: wrhearing@waterboards.ca.gov with a subject of "**BBID ACL Hearing**". Electronic submittals to the State Water Board of documents greater than 11 megabytes in total size should be submitted on a compact disc (CD). Each electronically submitted exhibit must be saved as a separate PDF file, with the name in lower case lettering.

- 8. PRE-HEARING CONFERENCE:** At the hearing officers' discretion, a pre-hearing conference may be conducted before the proceeding to discuss the scope of the hearing, the status of any protests, and any other appropriate procedural issues.
- 9. ORDER OF PROCEEDING:** Hearing officers will follow the Order of Proceedings specified in California Code of Regulations, title 23, section 648.5. Participants should take note of the following additional information regarding the major hearing events. The time limits specified below may be changed by the hearing officers, for good cause.

- a. **Policy Statements Within the Evidentiary Hearing:** Policy statements will be heard at the start of the hearing, before the presentation of cases-in-chief. Oral summaries of the policy statements will be limited to **five (5) minutes** or such other time as established by the hearing officers.
- b. **Presentation of Cases-In-Chief:** Each party who so indicates on a Notice of Intent to Appear may present a case-in-chief addressing the key issues identified in the hearing notice. The case-in-chief will consist of any opening statement, oral testimony, introduction of exhibits, and cross-examination of the party's witnesses. The hearing officers may allow redirect examination and recross examination. The hearing officers will decide whether to accept the party's exhibits into evidence upon a motion of the party after completion of the case-in-chief.
 - i. **Opening Statements:** At the beginning of a case-in-chief, the party or the party's attorney may make an opening statement briefly and concisely stating the objectives of the case-in-chief, the major points that the proposed evidence is intended to establish, and the relationship between the major points and the key issues. Oral opening statements will be limited to **(20) minutes** per party. A party may submit a written opening statement before the hearing or during the hearing, prior to their case-in-chief. Any policy-oriented statements by a party should be included in the opening statement.
 - ii. **Oral Testimony:** All witnesses presenting testimony shall appear at the hearing. Before testifying, witnesses shall swear or affirm that the written and oral testimony they will present is true and correct. Written testimony shall not be read into the record. Written testimony affirmed by the witness is direct testimony. Witnesses will be allowed up to **(20) minutes** to summarize or emphasize their written testimony on direct examination. Each party will be allowed up to **one (1) hour total** to present all of its direct testimony.³
 - iii. **Cross-Examination:** Cross-examination of a witness will be permitted on the party's written submittals, the witness' oral testimony, and other relevant matters not covered in the direct testimony. (Gov. Code, § 11513, subd. (b).) If a party presents multiple witnesses, the hearing officers will decide whether the party's witnesses will be cross-examined as a panel. Cross-examiners initially will be limited to **one (1) hour** per witness or panel of witnesses. The hearing officers have discretion to allow additional time for cross-examination if there is good cause demonstrated in an offer of proof. Ordinarily, only a party or the party's representative will be permitted to examine a witness, but the hearing officers may allow a party to designate a person technically qualified in the subject being considered to examine a witness.
 - iv. **Redirect and Recross Examination:** Redirect examination may be allowed at the discretion of the hearing officers. Any redirect examination and recross examination permitted will be limited to the scope of the cross-examination and the redirect examination, respectively. The hearing officers may establish time limits for any permitted redirect and recross examination.

³ The hearing officers may, for good cause, approve a party's request for additional time to present direct testimony during the party's case-in-chief. The hearing officers may allow additional time for the oral direct testimony of the witness if the witness is adverse to the party presenting the testimony and the hearing officers are satisfied that the party could not produce written direct testimony for the witness.

v. **Questions by State Water Board and Staff:** State Water Board members and staff may ask questions at any time and may cross-examine any witness.

c. **Rebuttal:** After all parties have presented their cases-in-chief and their witnesses have been cross-examined, the hearing officers will allow parties to present rebuttal evidence. Rebuttal evidence is new evidence used to rebut evidence presented by another party.

Rebuttal testimony and exhibits need not be submitted prior to the hearing, although the hearing officers may require submittal of rebuttal testimony and exhibits before they are presented in order to improve hearing efficiency. 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. Cross-examination of rebuttal evidence will be limited to the scope of the rebuttal evidence.

d. **Closing Statements and Legal Arguments:** At the close of the hearing or at other times, if appropriate, the hearing officers may allow oral closing statements or legal arguments or set a schedule for filing legal briefs or written closing statements. If the hearing officers authorize the parties to file briefs, three copies of each brief shall be submitted to the State Water Board, and one copy shall be served on each of the other participants on the service list. A party shall not attach a document of an evidentiary nature to a brief unless the document is already in the evidentiary hearing record or is the subject of an offer into evidence made at the hearing.

10. EX PARTE CONTACTS: During the pendency of this proceeding, commencing no later than the issuance of the Notice of Hearing, there shall be no *ex parte* communications with State Water Board members or State Water Board hearing team staff and supervisors, regarding substantive or controversial procedural issues within the scope of the proceeding. (Gov. Code, §§ 11430.10-11430.80.) **Any communications regarding potentially substantive or controversial procedural matters, including but not limited to evidence, briefs, and motions, must demonstrate that all parties were served and the manner of service.** Parties may accomplish this by submitting a proof of service or by other verification, such as correct addresses in an electronic-mail carbon copy list, or a list of the parties copied and addresses in the carbon copy portion of a letter. Communications regarding non-controversial procedural matters are permissible and should be directed to staff on the hearing team, not State Water Board members. (Gov. Code, § 11430.20, subd. (b).) A document regarding *ex parte* communications entitled "Ex Parte Questions and Answers" is available upon request or from our website at:
http://www.waterboards.ca.gov/laws_regulations/docs/exparte.pdf.

11. RULES OF EVIDENCE: Evidence will be admitted in accordance with Government Code section 11513. Hearsay evidence may be used to supplement or explain other evidence, but over timely objection shall not be sufficient in itself to support a finding unless it would be admissible over objection in a civil action.

NOTICE OF INTENT TO APPEAR

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

Administrative Civil Liability
against
Byron-Bethany Irrigation District

**scheduled to commence
Wednesday, October 28, 2015 and continue, if necessary,
on October 29 and 30, 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): _____

Mailing Address: _____

Phone Number: () _____ Fax Number: () _____

E-mail: _____

Optional:

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

Signature: _____ Dated: _____

