
State Water Resources Control Board

September 21, 2015

Michael E. Vergara, Esq.
General Counsel
Byron-Bethany Irrigation District
Somach Simmons & Dunn
500 Capitol Mall, Suite 1000
Sacramento, CA 95814
mvergara@somachlaw.com

Via Electronic-Mail

RE: PRE-HEARING CONFERENCE IN THE MATTER OF ALLEGED UNAUTHORIZED DIVERSION BY BYRON-BETHANY IRRIGATION DISTRICT

Dear Mr. Vergara:

In your letter of September 18, 2015, you raised several concerns regarding the content of my letter to the parties in this matter dated September 11, 2015.

The letter of September 11, 2015, did not alter the scope of the hearing from that identified in the Notice of Public Hearing and Pre-Hearing Conference issued on August 19, 2015 (Hearing Notice). A determination on the first key issue identified in the Hearing Notice – whether the State Water Board should impose administrative civil liability upon Byron-Bethany Irrigation District for trespass – necessarily includes a determination of whether Byron-Bethany Irrigation District engaged in a trespass. Because the scope of the hearing remains the same, I will not amend the Hearing Notice.

I have requested a status report from the Prosecution Team on pending requests for records pursuant to the Public Records Act related to the subject matter of this proceeding because the timing of production may impact the timing of procedural deadlines and the hearing in this matter. The inquiry is factual. The requested status report by the Prosecution Team should be served on all parties.

I will consider your clarification of Mr. Gilmore's availability in determining whether a postponement or modification of the scheduled hearing dates is warranted. I will make a final ruling on the requests for postponement after the deadline for receipt of comments from other parties.

Stipulation as to undisputed facts will streamline the hearing process, and I expect the Prosecution Team and Byron-Bethany Irrigation District to act in good faith to determine whether there are any facts to which they can stipulate. The list of factual matters in my letter of September 11, 2015, for discussion by the parties was not intended to be exhaustive. If the method of determining whether water was available for water right holders in the California Delta is not a matter in dispute, Byron-Bethany Irrigation District and the Prosecution Team should submit a written stipulation.

Sincerely,

A handwritten signature in black ink, appearing to read "Tam M. Doduc". The signature is fluid and cursive, with a long horizontal stroke at the end.

Tam M. Doduc
Hearing Officer

cc: Service List

**SERVICE LIST OF PARTICIPANTS
BYRON-BETHANY IRRIGATION DISTRICT
ADMINISTRATIVE CIVIL LIABILITY HEARING
(09/02/15; Revised: 09/10/15)**

PARTIES	
THE FOLLOWING <u>MUST BE SERVED</u> WITH WRITTEN TESTIMONY, EXHIBITS AND OTHER DOCUMENTS. (All have AGREED TO ACCEPT electronic service, pursuant to the rules specified in the hearing notice.)	
<p>Division of Water Rights Prosecution Team Andrew Tauriainen, Attorney III SWRCB Office of Enforcement 1001 I Street, 16th Floor Sacramento, CA 95814 andrew.tauriainen@waterboards.ca.gov</p>	<p>Byron Bethany Irrigation District Daniel Kelly Somach Simmons & Dunn 500 Capitol Mall, Suite 1000, Sacramento, CA 95814 dkelly@somachlaw.com</p>
<p>Patterson Irrigation District Banta-Carbona Irrigation District The West Side Irrigation District Jeanne M. Zolezzi Herum\Crabtree\Suntag 5757 Pacific Ave., Suite 222 Stockton, CA 95207 jzolezzi@herumcrabtree.com</p>	<p>City and County of San Francisco Johnathan Knapp Office of the City Attorney 1390 Market Street, Suite 418 San Francisco, CA 94102 jonathan.knapp@sfgov.org</p>
<p>Central Delta Water Agency Jennifer Spaletta Spaletta Law PC PO Box 2660 Lodi, CA 95241 jennifer@spalettalaw.com</p> <p>Dante Nomellini and Dante Nomellini, Jr. Nomellini, Grilli & McDaniel ngmplcs@pacbell.net dantejr@pacbell.net</p>	<p>California Department of Water Resources Robin McGinnis, Attorney PO Box 942836 Sacramento, CA 94236-0001 robin.mcginnis@water.ca.gov</p>
<p>Richard Morat 2821 Berkshire Way Sacramento, CA 95864 rjmorat@gmail.com</p>	<p>San Joaquin Tributaries Authority Valeri Kincaid O'Laughlin & Paris LLP 2617 K Street, Suite 100 Sacramento, CA 95814 vkincaid@olaughlinparis.com</p>
<p>South Delta Water Agency John Herrick, Esq. 4255 Pacific Ave., Suite 2 Stockton, CA 95207 jherriaw@aol.com</p>	<p>State Water Contractors Stefani Morris, Attorney 1121 L Street, Suite 1050 Sacramento, CA 95814 smorris@swc.org</p>