

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.

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DEPOSITION OF KATHY BARE

November 23, 2015

Reported By: KATHRYN DAVIS, CSR No. 3808

WSID CDO/BBID ACL
WSID0059

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APPEARANCES

For the Central Delta Water Agency:

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21 Also Present:

22 NICHOLAS BONSIGNORE, P.E.
23 WAGNER & BONSIGNORE

24

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1 BE IT REMEMBERED, that on Thursday, November 23,
2 2015, commencing at the hour of 9:57 a.m, thereof, at
3 the offices of SOMACH SIMMONS & DUNN, 500 Capitol Mall,
4 Suite 1000, Sacramento, California, before me, KATHRYN
5 DAVIS, a Certified Shorthand Reporter in the State of
6 California, duly authorized to administer oaths and
7 affirmations, there personally appeared

8 KATHY BARE,
9 called as witness herein, who, having been duly sworn,
10 was thereupon examined and interrogated as hereinafter
11 set forth.

12 --o0o-

13 EXAMINATION BY MS. SPALETTA

14 Q BY MS. SPALETTA: Good morning, Ms. Bare. My
15 name is Jennifer Spaletta. I represent Central Valley
16 Water Agency, and today we are here to take your
17 deposition in the enforcement action against West Side
18 Irrigation District.

19 Do you understand that?

20 A Yes.

21 Q Before we get started, we are going to go around
22 the room and let everyone introduce themselves, starting
23 with your counsel sitting next to you.

24 MS. SMITH: Janelle Smith with the Attorney
25 General's Office for the deponent.

1 MR. TAURIAINEN: Andrew Tauriainen, Office of
2 Enforcement, Prosecution Team.

3 MR. BONSIGNORE: Nick Bonsignore, Wagner &
4 Bonsignore Engineers, consultants to West Side
5 Irrigation District.

6 MS. SPALETTA: Jennifer Spaletta.

7 MS. ZOLEZZI: Jeanne Zolezzi, general counsel
8 for the West Side, Patterson and the Banta-Carbona
9 Irrigation Districts.

10 MR. KELLY: Dan Kelly, counsel for Byron-Bethany
11 Irrigation District.

12 MR. WILLIAMS: Phil Williams, in-house counsel
13 for Westlands Irrigation District.

14 MR. O'LAUGHLIN: Tim O'Laughlin, San Joaquin
15 Tributaries Authority.

16 MS. MORRIS: Stephanie Morris, general counsel,
17 State Water Contractors.

18 MS. MARROW: Michele Marrow, Department of Water
19 Resources.

20 Q BY MS. SPALETTA: Before we get started, I want
21 to make sure that you understand how the deposition will
22 work. Have you ever had your deposition taken before?

23 A I have not.

24 Q We are going to go into the rules of the
25 deposition. Basically, it is just a question and answer

1 time period, but we take it a little bit slower because
2 we have a court reporter here who is going to be
3 recording everything that we say to create a written
4 record.

5 So it is very important that we pause between
6 question and answer, and we don't speak over each other,
7 so that she can get a clean record today. Do you
8 understand that?

9 A Yes.

10 Q The record today may actually be used in the
11 enforcement hearing or in a trial court. Do you
12 understand that?

13 A Yes.

14 Q Is there any reason that you cannot provide
15 complete and accurate testimony today?

16 A No.

17 Q I will be asking you about work that you've
18 performed as part of your job at the State Board. I
19 know that there are other people that you've worked
20 with. So at times you may not have personal knowledge
21 to answer my question.

22 It is okay if you estimate or provide your
23 understanding to respond to a question, but it is not
24 okay to speculate or guess. So if I ask a question and
25 you would need to speculate or guess in order to answer,

1 I don't want you to answer the question. Just tell me
2 that you would have to speculate or guess to answer the
3 question.

4 A Okay.

5 Q Also, your counsel today may be objecting to
6 some of my questions. For example, if I ask a bad
7 question, she might object that the question was vague.
8 If she lodges an objection like that to the form of the
9 question, you still need to answer the question.

10 There may be times where she objects on the
11 ground of privilege and will instruct you not to answer.
12 That is the only time that you should not answer the
13 question. Do you understand that?

14 A Yes.

15 Q If I do ask a bad question and you don't
16 understand it, which can happen, just say you don't
17 understand the question and ask me to clarify it and I'd
18 be happy to clarify it.

19 A Okay.

20 Q If you need to take a break at all today, just
21 let us know and we'll take a break and go off the
22 record. I just ask that you try not to take a break
23 when a question is pending; that you complete your
24 answer and then we can take a break.

25 A (Witness nods.)

1 Q What did you do to prepare for your deposition
2 today?

3 A I spoke with Janelle and Andrew.

4 Q Anything else?

5 A No. I read through the notice of deposition.

6 Q Did you review any other documents besides the
7 notice?

8 A Not as part of the deposition.

9 Q I believe we've marked your notice as
10 Exhibit 88, so if you could go ahead and look at that
11 sitting next to the binder there.

12 A Yes.

13 Q Is this the notice that you reviewed?

14 A Yes.

15 Q If you could turn and look at pages 2 and 3,
16 you'll see a list of documents to be produced at the
17 deposition.

18 A Yes.

19 Q Did you attempt to locate the documents that
20 were requested in this list?

21 A Yes. I believe they had already been
22 provided to Andrew.

23 Q And which documents did you have that were
24 responsive to the list?

25 A It would have been the letter that I sent to

1 the City of Tracy as part of the original complaint.

2 And there were a series of emails that related to

3 the complaint that I provided to Andrew.

4 Q And when you say the "complaint," what are you
5 referring to?

6 A There was -- excuse me -- a public complaint
7 that was submitted to the Division. And it was a
8 complaint against the City of Tracy, alleging that
9 they were selling treated wastewater to West Side
10 Irrigation District without the proper authority
11 from the State Water Board.

12 Q And was that a complaint filed by Mr. Steve
13 Nicolaou?

14 A Yes.

15 Q Are there any other documents that you can think
16 of that were responsive to the notice that you provided?

17 A No.

18 Q What is your educational background?

19 A I have a degree in Civil Engineer from San
20 Jose State, and I'm a registered civil engineer.

21 Q In California?

22 A Yes.

23 Q Any other specialized education?

24 A No.

25 Q Any other certifications?

1 A No.

2 Q When did you obtain your degree from San Jose?

3 A 1988.

4 Q And what was your first job?

5 A I worked for -- my first professional job was

6 -- I worked for the City of Los Angeles, Department

7 of Water and Power.

8 Q And how long were you there?

9 A Between two and three years.

10 Q And what were your job responsibilities?

11 A I worked in the environmental section and I

12 maintained the NPDES permit for the Coastal

13 Generating Station.

14 Q What was your next job?

15 A I worked for CalTrans for a year in design

16 work. Didn't like that at all.

17 Q And what was your next job?

18 A With the State Water Board. And that was

19 Division of Water Quality. And I worked in NPDES

20 permitting and the Pretreatment Program.

21 Q And how long were you there?

22 A I'm guessing about five or six years.

23 Q And what was your next job?

24 A I transferred to Division of Water Rights,

25 State Water Board, and I worked in permitting.

1 Q And how long did you work in permitting?

2 A I believe it was about five -- five years.

3 Q What types of permitting projects did you work
4 on?

5 A In just the individual water rights permits.

6 Q So no particular specialty?

7 A No.

8 Q And what was your next job?

9 A I transferred to the Division of Financial
10 Assistance in the State Water Board.

11 Q What did you do there?

12 A I worked in the State Revolving Fund Program.
13 We gave out low-interest loans for capital
14 improvement projects, mostly wastewater treatment
15 plants.

16 Q And how long were you there?

17 A Eight years.

18 Q And what was your next job?

19 A It is my current position, which is in the
20 Division of Water Rights enforcement section, and I
21 have been about three and a half years in the
22 enforcement section.

23 Q And what is your current job title?

24 A Water Code resource control engineer.

25 Q And who is your supervisor?

1 A Victor Vasquez.

2 Q And who is his supervisor?

3 A Kathy Mrowka.

4 Q And then do you have any staff that you
5 supervise?

6 A I do not. I'm the staff.

7 Q What are your job responsibilities as a water
8 resource control engineer?

9 A I work primarily on complaint investigations
10 that can often lead to enforcement actions, but
11 almost exclusively complaint investigation.

12 Q Did you work at all on the water availability
13 analysis that the State Board did in 2015?

14 A No.

15 Q Have you worked on the Byron-Bethany enforcement
16 action?

17 A No.

18 Q Have you worked on the West Side Irrigation
19 District enforcement action?

20 A Yes.

21 Q And what have you done related to the West Side
22 enforcement action?

23 A I took a crack at the very first version of
24 the Draft CDO.

25 Q Anything else?

1 A At this point, that is what it has been
2 limited to, both the complaint investigation and
3 then the initial draft of the CDO.

4 Q When did you start working on the West Side
5 matter?

6 A The complaint was assigned to me early April.

7 Q Of 2015?

8 A Of 2015, yes.

9 Q So that was Mr. Nicolaou's complaint that was
10 assigned to you?

11 A Yes.

12 Q By who?

13 A By Victor Vasquez.

14 Q And what was the first thing that you did?

15 A First thing -- I read through the complaint.

16 And then what I typically do, when I receive a

17 complaint, is I'll do a little background search.

18 If there is a file related to it, I'll look through

19 the file. I might do a Google search to find

20 whatever information, background information.

21 Q And did you do that background research for this
22 matter?

23 A Yes. I believe in this matter, I looked at
24 the City of Tracy's website because there was
25 mention in the complaint that there was an agreement

1 between West Side Irrigation District and the City
2 for the sale of water, of wastewater. And I looked
3 at the website to confirm to see if I could find the
4 agreement.

5 Q Did you find one?

6 A I did. And, in fact, I should have said
7 earlier that that might be also something that is
8 part of the record.

9 Q Other than finding this agreement on the City of
10 Tracy's website, what other background research did you
11 do?

12 A I believe I looked through West Side
13 Irrigation District's file. And just a little
14 background to see if anyone in the office had worked
15 on something recently, I could go talk to them if
16 there was a similar complaint. It's a rather large
17 file, so I would have gone through the entire thing.

18 Q The license file?

19 A The permit file, yes.

20 Q West Side's permit has actually been converted
21 to a license, correct?

22 A Yes, that is correct. Often we call it the
23 "application file."

24 Q So you just talked about two different things:
25 One was your review of the West Side license file, and

1 then the other was asking staff. So let's talk about
2 asking other staff first. Who did you ask and what did
3 you learn?

4 A There was nothing in the file recently for
5 me -- oh, you know, I might have asked if a petition
6 had been submitted for West Side Irrigation
7 District.

8 Q What kind of petition?

9 A A petition for the sale of the treated
10 wastewater.

11 Q Why would you have asked that?

12 A That was the nature of the complaint.

13 Q What did you find out?

14 A They had not.

15 Q Who did you ask?

16 A I don't recall who I asked. It might have
17 been Kathy Mrowka. Even though she is no longer in
18 charge of that unit, she would have familiarity with
19 it. So either Kathy or Scott McFarland. He is now
20 in charge of that section of that unit.

21 Q Is there anything else that you located in the
22 license file?

23 A No.

24 Q So you indicated that the complaint was assigned
25 to you in April 2015, and you read it and then did some

1 background research?

2 A Un-huh.

3 Q Did you do anything to determine the validity of
4 the allegations in the complaint?

5 A No. At that point, I get the alleged
6 offender's side before I make any determination.

7 Q And who was the alleged offender?

8 A The City of Tracy.

9 Q And what did you do to get their side?

10 A I drafted a letter asking -- letting them
11 know. It was an inquiry letter, asking them to
12 respond to the allegations in the complaint.

13 Q And then did you get a response?

14 A Yes.

15 Q And what did you do with that information?

16 A Once I read it, it was detailed in nature and
17 there was -- it was legal in nature also. So I
18 asked my supervisor if we should get a legal
19 opinion.

20 Q And then what did you do?

21 A And then next, I was told that Andrew would
22 respond to the response letter that we got from the
23 City.

24 Q So Andrew would respond to the City?

25 A Yes.

1 Q And that is Andrew Tauriainen?

2 A Yes.

3 Q And did you assist Mr. Tauriainen with the
4 response?

5 A I don't believe so, no.

6 Q Did you have any further communications with the
7 City?

8 A No.

9 Q What other work have you done on the West Side
10 enforcement matter?

11 A Like I said, I took the very first crack at
12 the Draft CDO.

13 Q Why did you do that?

14 A I was directed to. I'm staff.

15 Q From Mr. Vasquez?

16 A Yes.

17 Q So previously you told me that the City of Tracy
18 was the alleged offender, and now we have moved to
19 drafting a Cease and Desist Order against West Side.
20 How was it that you went from the City being the alleged
21 offender to drafting a CDO against West Side, if you
22 know?

23 A I don't know. I wasn't part of that decision
24 or conversation.

25 Q Is it your understanding that the West Side

1 enforcement matter was made a priority at the State

2 Board?

3 MS. SMITH: Objection. Calls for speculation.

4 THE WITNESS: I was told when it was given to me
5 that it was a priority.

6 Q BY MS. SPALETTA: Were you given any explanation
7 for why it was a priority?

8 A No. I -- I believe I know why but --

9 Q What is your understanding?

10 A Because when it came in, it didn't come in
11 initially through the Cal EPA website. It came in
12 through Andrew Sawyer and from Kathy Mrowka. So
13 because it was a little elevated, I believe that is
14 why they said it was a priority.

15 Q Anything else?

16 A No. Other than that, it was routine from my
17 standpoint.

18 Q Did you determine whether or not the City of
19 Tracy and West Side actually entered into an agreement
20 in 2015 regarding the sale of treated wastewater?

21 A When I looked on the website, I saw the
22 agreement. I don't know that I ever saw a signed
23 agreement but it was part of the meeting minutes.

24 Q And did you determine whether or not West Side
25 had actually pumped any water related to that agreement

1 in 2015?

2 A No.

3 Q Do you know if anyone else did?

4 A I do not know.

5 Q Do you have an understanding whether or not West

6 Side ever pumped any water from the City of Tracy in

7 2015?

8 A I don't know if it was from the City of

9 Tracy. It is my understanding that water was

10 diverted; but whether it was wastewater, I don't

11 know.

12 Q What is your understanding that water was

13 diverted based on?

14 A Initially, they submitted a certification

15 statement saying that they weren't diverting water.

16 And then it was, I believe, lifted later.

17 Q What do you mean "lifted"?

18 A Not lifted -- they retracted the

19 certification statement.

20 Q West Side did?

21 A Yes. That is my understanding.

22 Q Did you actually review those documents or is

23 that what somebody told you?

24 A I did not review the documents. That was --

25 I receive news information from, like, Maven and

1 WDR. And it gives, you know, updates on recent
2 water right related activities. So I probably got
3 it from something like that.

4 Q At some point, did Michael George send you some
5 photographs related to West Side?

6 A Yes.

7 MS. SPALETTA: I'm going to mark this email
8 as next in order. And I apologize. I don't have
9 copies. The next one as 93.

10 (Whereupon, Exhibit No. 93 was
11 marked for identification.

12 MS. SPALETTA: And the next one we'll mark as
13 94, the next one as 95, and the last one as 96.

14 (Whereupon, Exhibits 94-96 were
15 marked for identification.)

16 Q BY MS. SPALETTA: Ms. Bare, could you please
17 tell us what exhibit -- is the email Exhibit 93?

18 MS. SMITH: Yes.

19 Q BY MS. SPALETTA: What is Exhibit 93?

20 A That is the email I received from Michael
21 George.

22 Q On what day?

23 A June 16th, 2015.

24 Q And what was he sending you with that email?

25 A What I had asked for is -- because I was

1 drafting the CDO, I wanted to make a finding
2 regarding the inspection that the Watermaster made.
3 So that was my intent in asking. That was a result
4 of this email -- or this email was a result of me
5 asking him that information.

6 Q You were asking him for information from an
7 inspection that he conducted?

8 A Yes.

9 Q What did you receive?

10 A I received these photos and some information
11 that one of his inspectors had submitted after the
12 inspection.

13 Q Was that from John Collins?

14 A Yes.

15 Q We have marked three photographs as Exhibits 94,
16 95 and 96. Are these the photographs that you received
17 from Mr. George?

18 A Yes.

19 Q How did you use these photographs?

20 A I did not.

21 Q Why not?

22 A I didn't need them to make the finding for
23 the CDO.

24 Q Was there anything relevant in these photographs
25 for public use of the findings in the Cease and Desist

1 Order?

2 A No.

3 MS. SMITH: Objection. Calls for a legal
4 conclusion.

5 THE WITNESS: They weren't necessary for what I
6 was doing.

7 Q BY MS. SPALETTA: Do you know what is depicted
8 in Exhibit 96?

9 A Based on other photos that I've seen, I've
10 never been to the site but I believe that is the New
11 River.

12 Q That is what?

13 A Excuse me. I'm sorry -- the Old River.

14 MR. O'LAUGHLIN: I was going to say.

15 THE WITNESS: I've done that before. Sorry
16 about that. I'm renaming it. Sorry about that.

17 Q BY MS. SPALETTA: That is okay.

18 All right. Let's go ahead and turn, then, to
19 the draft -- yes, the Draft Cease and Desist Order that
20 you said you took the first stab at writing, which is
21 Exhibit 2 in the binder.

22 A Okay.

23 Q Exhibit 2 contains a list of findings numbered
24 one through 35. Do you see that?

25 A Uh-huh.

1 Q Did you draft those initially?

2 A Initially, I can't say that I drafted all of
3 them but many of them I did.

4 Q Okay.

5 A I can also safely say that Andrew probably
6 changed all of them at some point.

7 Q Look at finding No. 4, please, on page 2. It
8 says, "Until 2014, the City abandoned the wastewater
9 treatment plant discharged to Old River."

10 A Uh-huh.

11 Q Did you make that determination?

12 A No.

13 Q Or did someone else?

14 A That wouldn't have been me.

15 Q Do you know how that determination was made?

16 A No. I wasn't part of the conversation.

17 Q Do you know where the City of Tracy's wastewater
18 enters Old River?

19 A I've seen maps.

20 Q But as you sit here today, could you describe
21 it?

22 A No.

23 Q Do you know anything about the history of what
24 has happened to that treated wastewater from the City of
25 Tracy at the time?

1 A No.

2 Q Do you know anything about West Side's Bethany
3 Drain?

4 A I've reviewed the file, so I have some
5 understanding of it, and I have looked at very old
6 photos.

7 Q Did you do any work on the West Side enforcement
8 action related to tailwater from the Bethany Drain?

9 A No. I'm not sure. I could be asked to do
10 that in the future, but at this point I have not.

11 Q Look at finding 28 on page 5 of the CDO. Just
12 take a minute to read that.

13 A (Witness reading.) Yes.

14 Q Did you do anything related to any of the
15 statements that are contained in paragraph 28?

16 A I do not believe so.

17 Q Look at paragraphs 30 and 31, please.

18 A (Witness reading.) Okay. I've read it.

19 Q Did you do anything relating to the statements
20 in paragraphs 30 and 31?

21 A In 30, no. In 31, I checked to see if the
22 City had sought approval from the State Water Board.

23 Q Anything else?

24 A No.

25 Q Did you perform any analysis related to Water

1 Code Section 1211?

2 A No.

3 Q Are you familiar with Water Code Section 1485?

4 A Remind me, please.

5 Q I believe that section relates to wastewater; is
6 that correct? The City's discharge of wastewater.

7 A I would have to refresh my memory, but yes.

8 Q Okay. We'll grab it on our next break and then
9 we can look at it.

10 A Okay.

11 Q Did you undertake any analysis of whether or not
12 it would have been proper for West Side to divert the
13 City of Tracy's wastewater?

14 MS. SMITH: Objection to "proper" as vague.

15 THE WITNESS: Not yet.

16 Q BY MS. SPALETTA: Do you anticipate doing that?

17 MS. SMITH: Objection. Calls for speculation.

18 THE WITNESS: I could be asked to review
19 information that comes in as part of the subpoena.

20 Q BY MS. SPALETTA: Is it your understanding that
21 in order for West Side to divert the City of Tracy's
22 wastewater, that there is some type of State Board
23 approval needed?

24 A Yes.

25 Q And what is that understanding based on?

1 A Section 1211 (a.)

2 Q Is that based on your own analysis of Section
3 1211 (a) or is it based on something that somebody else
4 has told you?

5 A Someone else has told me. And that's part of
6 the subject of the CDO.

7 Q Is that someone else a lawyer at the State
8 Board?

9 A Yes.

10 Q If you could turn to Exhibit 38, please.
11 Exhibit 38 is Mr. Collins' inspection report from
12 June 18th, 2015. Is this the inspection report that you
13 were referring to earlier?

14 A Yes.

15 Q What information from this inspection report did
16 you rely on or use?

17 A It would have just been to put the basics in
18 the finding, the date Mr. Collins went on the
19 inspection, and what he found while he was there.

20 Q Any other purpose?

21 A No. And like I said, I imagine that whatever
22 finding I initially drafted, it has changed
23 substantially.

24 MS. SPALETTA: I'm going to mark our next
25 exhibit in order, Exhibit 97.

1 (Whereupon, Exhibit No. 97 was
2 marked for identification.)

3 Q BY MS. SPALETTA: I'll give you a minute to
4 review it.

5 A (Witness reading.) I've read it.

6 Q Do you recognize this as an email exchange
7 between you and Mr. Vasquez and Kathy Mrowka on June 12,
8 2015?

9 A Yes.

10 Q It looks like the first email was to you from
11 Mr. Vasquez, Ms. Mrowka and Mr. Tauriainen referring to
12 a standard provision 2.n of the City of Tracy's NPDES
13 permit?

14 A Yes.

15 Q Is that a provision that you located?

16 A Yes.

17 Q And why did you think that provision was
18 important?

19 A Because it speaks to Water Code Section 1211.

20 Q And, specifically, that provision says:

21 "For publicly-owned treatment works, prior to
22 making any change in the point of discharge,
23 place of use or purpose of use of treated
24 wastewater that results in a permanent decrease
25 of flow in any portion of a watercourse, the

1 discharger must file a petition with the State
2 Water Board, Division of Water Rights, and
3 receive approval for such a change."

4 Did I read that correctly?

5 A Yes.

6 Q So did you conclude that the City of Tracy's
7 treatment plant was a publicly-owned treatment work?

8 MS. SMITH: Objection. Calls for a legal
9 conclusion.

10 Q BY MS. SPALETTA: Or did somebody else make that
11 conclusion?

12 A I believe it is a POTW.

13 Q And did somebody make the determination of
14 whether there was a change in the point of discharge,
15 place of use or purpose of use?

16 A I don't know.

17 Q That wasn't you?

18 A Can you ask that again?

19 Q Sure. The second phrase of the provision
20 relates to making any change in the point of discharge.
21 Did you make a determination as to whether the City had
22 made a change in the point of discharge?

23 MS. SMITH: Objection. Calls for a legal
24 conclusion.

25 THE WITNESS: It seemed to me that they -- I

1 didn't have any information that they had changed the
2 point of discharge.

3 Q BY MS. SPALETTA: Did you have any information
4 that they had changed the place of use?

5 MS. SMITH: Objection. Calls for a legal
6 conclusion.

7 THE WITNESS: If the City -- if West Side
8 Irrigation District was going to be diverting that
9 wastewater, then the place of use would be different
10 than what's -- it would be different than what it had
11 been originally.

12 Q BY MS. SPALETTA: And what had it been
13 originally?

14 A It went to the Old River. The wastewater
15 effluent from the plant went to the Old River.

16 Q And what's your understanding based on?

17 A And then I believe downstream users will
18 appropriate the water and use the water.

19 Q What is that understanding based on?

20 A Water rights.

21 Q So any specific analysis of prior history of
22 what happened to the wastewater from the City of Tracy?

23 A No.

24 Q And then the next phrase is a change in the
25 purpose of use of treated wastewater. Did you make any

1 conclusions whether there had been a change in the
2 purpose of use?

3 MS. SMITH: Objection. Calls for a legal
4 conclusion.

5 THE WITNESS: No.

6 Q BY MS. SPALETTA: Do you know whether anyone
7 else did?

8 A I do not know.

9 Q And then the next phrase says "that results in a
10 permanent decrease of flow in any portion of a
11 watercourse."

12 Did you undertake any analysis to see if there
13 was a permanent decrease of flow in any portion of a
14 watercourse?

15 MS. SMITH: Again, objection. It calls for a
16 legal conclusion.

17 THE WITNESS: No.

18 Q BY MS. SPALETTA: Do you know if anyone else
19 did?

20 A I'm not sure.

21 Q Do you know what that phrase means, "permanent
22 decrease of flow"?

23 MS. SMITH: Objection. Calls for a legal
24 conclusion.

25 THE WITNESS: I mean, just what it says, if

1 there is a permanent decrease in flow or not, but I

2 don't know that I can explain it further.

3 Q BY MS. SPALETTA: Do you know if the term

4 "permanent" is important in the eyes of the State Water

5 Board enforcement? Does it matter if the change in flow

6 is permanent versus temporary? Is that something that

7 you've run into?

8 A No, but it seemed to me that it is going to

9 be important whether the wastewater has been

10 abandoned in prior years or not.

11 Q And why did that seem important to you?

12 A To sell water that had been abandoned

13 previously, that means -- if it had been abandoned

14 previously, then it would have been available for

15 appropriation for somebody else.

16 So to sell water that was previously

17 abandoned, that would take water out of the system.

18 Q And what is your understanding that you've just

19 described to me based on?

20 A Just kind of reading through the file and

21 this case in general.

22 Q In your explanation, it seems like you've

23 assumed that the City of Tracy previously abandoned its

24 wastewater; is that correct?

25 A Yeah.

1 Q And what is that understanding based on?

2 A The agreement between the City and West Side
3 Irrigation District. The agreements that I saw were
4 just 2014 and 2015, and I didn't see any from
5 previous years.

6 Q As part of your investigation, did you ask West
7 Side for any information about the use of the City's
8 wastewater?

9 A No.

10 Q Why not?

11 A I wasn't asked to or directed to. After I
12 wrote that initial letter to the City of Tracy, I
13 really did not have much involvement.

14 MS. SPALETTA: We'll mark our next exhibit in
15 order.

16 (Whereupon, Exhibit No. 98 was
17 marked for identification.)

18 Q BY MS. SPALETTA: Exhibit 98 is a document that
19 Mr. Tauriainen provided to us on November 20th and
20 indicated that you had reviewed. Do you recognize this
21 document?

22 A Yes.

23 Q And what is it?

24 A This I got off the City of Tracy's website. It
25 is the -- oh, never mind. Hang on.

1 I did get this, I believe, from the City of
2 Tracy's website. It's the agreement between the City --
3 the Drainage Agreement between the City of Tracy and
4 West Side Irrigation District. And I don't know that I
5 really analyzed or reviewed it. I was gathering
6 information, but not necessarily from my review.

7 Q Do you have an understanding, one way or the
8 other, whether this Exhibit 98 relates at all to the
9 City of Tracy's treated wastewater?

10 A I was -- I found this document. I was trying
11 to understand how the drainage system at West Side
12 Irrigation District operated.

13 Q And as a result of locating this document, what
14 understanding did you obtain?

15 A Other than locating the document and
16 providing it to management, I didn't do anything
17 else with it. And it was the end of last week, so I
18 pretty much found the document and I haven't done
19 anything with it.

20 MS. SPALETTA: Okay. Let's mark our next
21 exhibit in order.

22 (Whereupon, Exhibit No. 99 was
23 marked for identification.)

24 Q BY MS. SPALETTA: Exhibit 99 is a letter from
25 the State Water Resources Control Board from --

1 A Whalen Toy.

2 Q -- Whalen Toy, to West Side Irrigation District
3 dated September 21st, 1998. Is this a document that you
4 reviewed for your work?

5 A I didn't review it. I retrieved the document
6 for legal counsel.

7 Q Did you do anything else with it?

8 A I made a PDF of it.

9 Q Nothing else?

10 A Nope.

11 MS. SPALETTA: Our next exhibit will be
12 Exhibit 100.

13 (Whereupon, Exhibit No. 100 was
14 marked for identification.)

15 Q BY MS. SPALETTA: And what is Exhibit 100?

16 A This is a letter from the office that
17 represents West Side Irrigation District to Whalen
18 Toy.

19 Q And is this a document that you reviewed as part
20 of your work on the West Side matter?

21 A Again, I didn't review it. I retrieved it
22 for somebody else.

23 Q And then other than creating a PDF of it, did
24 you do anything else with it?

25 A I did not.

1 Q Were those two documents that we just marked
2 obtained from West Side's license file, Exhibit 99 and
3 100?

4 A Yes.

5 Q Did you retrieve any other documents from West
6 Side's license file?

7 A At some point, I did retrieve a map.

8 Q If you could turn to Exhibits 40 and 41, please.
9 Exhibit 40 and Exhibit 41 are maps that we marked
10 previously in the depositions. Do you recognize either
11 one of those?

12 A Yes. This (indicating) is one of the maps
13 that I retrieved.

14 Q When you say "this," are you referring to
15 Exhibit 40?

16 A Yes.

17 Q What about Exhibit 41?

18 A I believe 41 also.

19 Q And did you do anything with those maps, other
20 than retrieve them?

21 A No.

22 MS. SPALETTA: We'll mark our next Exhibit 101.

23 (Whereupon, Exhibit No. 101 was
24 marked for identification.)

25 Q BY MS. SPALETTA: Exhibit 101 is a April 10th,

1 2015 letter to Mr. Troy Brown, the City Manager of the
2 City of Tracy from you. Do you recognize this as the
3 letter that you sent to the City after you received the
4 complaint?

5 A Yes.

6 Q Was there any other correspondence that you sent
7 to the City?

8 A No. Oh, I amended this letter and put in
9 different penalties. There was an amended letter
10 because under the drought, you know, the amount of
11 civil liability can increase. So I sent an amended
12 letter with the increased Administrative Civil
13 Liability amounts and Cease and Desist Order
14 amounts.

15 MR. TAURIAINEN: Do you know when you did that?

16 THE WITNESS: I think it was, like, a month
17 later. The letter is identical except for the amounts.

18 Q BY MS. SPALETTA: Okay. Any other
19 correspondence that you had with the City?

20 A No.

21 MS. SPALETTA: Mr. Tauriainen, if you could just
22 confirm either that that amended letter has been
23 produced or have it produced, I would appreciate it.

24 MR. TAURIAINEN: I'm looking for it. I don't
25 recall seeing it, but I'll look and see. If I can

1 locate it and it hasn't already been produced, I'll send
2 it to you.

3 MS. SPALETTA: Thank you.

4 Q Did you have any correspondence with West Side
5 regarding this investigation?

6 A No. They were cc-ed on this letter.

7 Q Other than that?

8 A No.

9 Q Did you have any correspondence with Mr.
10 Nicolaou?

11 A No.

12 Q Do you know whether or not Mr. Nicolaou is a
13 user of water or not?

14 A I do not -- I do not know. I do not believe
15 he is. I believe he is a member of the public.

16 That wasn't in the complaint that he didn't mention
17 injury to his own right.

18 MR. TAURIANEN: If it is convenient now, I can
19 clarify that the amended letter was submitted. It is
20 dated May 26th by a stamp. It actually looks similar to
21 what is marked as Exhibit 101, except for some red
22 letters, red lines.

23 It has an additional date stamp marked May 26th.
24 The file name is -- and I'll read it off. It is
25 20150526_kdare_2_troy_brown.Pdf. It was in the first

1 submittal.

2 MS. SPALETTA: October 12th?

3 MR. TAURIAINEN: October 12th, under the
4 subfolder WSID, subfolder correspondence.

5 MS. SPALETTA: Thank you. Okay. At this time,
6 I'd like to just take a five-minute break.

7 (Whereupon, a recess was then taken.)

8 MS. SPALETTA: All right. We are back on the
9 record after a short break. We are going to mark our
10 next exhibit in order, which I believe is 102.

11 (Whereupon, Exhibit No. 102 was
12 marked for identification.)

13 Q BY MS. SPALETTA: It is an email from you to Mr.
14 Vasquez dated June 2nd, 2015.

15 (Whereupon, Exhibit No. 102 was
16 marked for identification.)

17 Q BY MS. SPALETTA: Do you recognize this email?

18 A Yes.

19 Q And the subject is WC Section 1485?

20 A Yes.

21 Q And then the email states:

22 "The way I read this section, Tracy cannot sell
23 their effluent to West Side until they have a
24 appropriate water right."

25 A Yes.

1 Q What was that statement based on?

2 A Me reading this section. And it was an email
3 just between me and my supervisor, and that was my
4 take on the section.

5 Q And by the "section," you mean Water Code
6 Section 1485?

7 A Right, but that's not my call to make. I
8 mean, that was a conversation between the two of us.
9 That would be something that Legal would have an
10 opinion on.

11 Q And what is it about Water Code Section 1485
12 that brings you to the conclusion you did reach? And
13 I've provided you a copy of Water Code Section 1485 to
14 look at.

15 A (Witness reading.)

16 It's the subject matter of 1485. I don't
17 know that there is anything specific in it that led
18 me to that conclusion. It seemed like it applied in
19 this case. But other than that, the final
20 determination would not have been mine to make.

21 MS. SPALETTA: I don't have any further
22 questions for you. Anyone else?

23 MR. KELLY: I have no questions.

24 EXAMINATION BY MR. WILLIAMS

25 Q BY MR. WILLIAMS: I have one question, if I may.

1 My name is Phil Williams. I'm in-house counsel for
2 Westlands Water District.

3 A Hi.

4 Q Just to be clear. When you were referencing the
5 agreement between the City of Tracy and West Side
6 Irrigation District regarding the sale of treated
7 wastewater, you referenced an agreement from 2015, I
8 believe; is that correct?

9 Is that the agreement you were referencing?

10 A At that -- I don't know. Was that the 2014
11 or 2015?

12 Q That is precisely it. You are getting to my
13 point exactly.

14 A I'd have to look at it again to see.

15 Q Would you, please?

16 A What number was that?

17 Q Well, it was in your testimony.

18 MR. TAURIAINEN: I'm not sure it is an exhibit.

19 Q BY MR. WILLIAMS: Okay.

20 A When I looked at the agreements online, I
21 looked at both 2014 and 2015.

22 Q Thank you, ma'am.

23 Do we know whether the agreements for 2014
24 currently have been provided, Mr. Tauriainen, by the
25 State Board? Do we know?

1 MR. TAURIAINEN: Yeah. We have provided the
2 copies we have, which were pulled from the website in
3 the initial PRA response in the subfolder "WSID." I
4 think the subfolder is "City of Tracy" but I don't have
5 it open.

6 Q BY MR. WILLIAMS: Okay. But, ma'am, just so I
7 am clear, your testimony is that you used both the
8 agreement from 2014 and the agreement from 2015 and you
9 reviewed them?

10 A Yes. I looked both of them up.

11 MR. WILLIAMS: Thank you.

12 MR. KELLY: No questions.

13 MR. O'LAUGHLIN: I have no questions.

14 MS. MORRIS: No.

15 MS. MORROW: Thank you. No questions.

16

17 (The deposition concluded at 11:08 a.m.)

18

19 --o0o--

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THE WITNESS

DATE SIGNED

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--o0o--

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1 DEPONENT'S CHANGES OR CORRECTIONS

2 Note: If you are adding to your testimony, print the
3 exact words you want to add. If you are deleting from
4 your testimony, print the exact words you want to
5 delete. Specify with "add" or "delete" and sign this
6 form.

7 DEPOSITION OF: Kathy Bare

8 CASE: In re: Byron-Bethany Irrigation District

9 DATE OF DEPO: November 23, 2015

10 Page Line CHANGE/ADD/DELETE

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25 Deponent's Signature _____ Date _____

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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

--oOo--

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DEPONENT'S CHANGES OR CORRECTIONS

Note: If you are adding to your testimony, print the exact words you want to add. If you are deleting from your testimony, print the exact words you want to delete. Specify with "add" or "delete" and sign this form.

DEPOSITION OF: Kathy Bare

CASE: In re: Byron-Bethany Irrigation District

DATE OF DEPO: November 23, 2015

Page Line CHANGE/ADD/DELETE

11	12	change "permit" to "permits"
11	13	change "Station" to "Stations"
12	24	Delete "Code"
13	11	change "investigation" to "investigation"
15	17	add "not" between would and has
34	6	change "from" to "for"

Deponent's Signature Kathy Bare Date 12/14/15