



EDMUND G. BROWN JR.
GOVERNOR



MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

State Water Resources Control Board

VIA ELECTRONIC MAIL

November 19, 2014

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HEARING OFFICER'S PRE-HEARING RULING ON REQUESTS FOR INTERVENTION, ADMISSIBILITY OF TESTIMONY, AND OBJECTIONS IN HEARING ON POTENTIAL ISSUANCE OF CEASE AND DESIST ORDER AGAINST STANFORD VINA RANCH IRRIGATION COMPANY

To the Above-Named Parties:

This letter sets forth my rulings on the requests for intervention and the admissibility of testimony set forth in the Notices of Intent to Appear (NOIs) the above-named parties have submitted in advance of the December 8, 2014 hearing on the potential issuance of a cease and desist order against Stanford Vina Ranch Irrigation Company (Stanford Vina). This letter further sets forth my rulings on objections Stanford Vina has raised.

General Matters

It is the policy of the State Water Resources Control Board (State Water Board or Board) to discourage the presentation of surprise testimony and exhibits. (Cal. Code Regs., tit. 23, § 648.4, subd. (a).) The rulings I set forth in this letter are intended to preclude surprise testimony and exhibits, and I therefore direct the parties to this proceeding to strictly comply with these rulings.

I further direct any party that desires to quash a subpoena or obtain a protective order submit such a request in writing as soon as is practicable and no later than the start of the hearing.

Meet-and-Confer Process on Evidentiary Issues

Some parties to this action may share interests that would allow for a coordinated or combined presentation of evidence. I hereby direct Stanford Vina to immediately meet and confer with Rumiano Farms, Gary Rumiano, Kraig Rumiano, and Keith Rumiano (collectively, Rumiano) to consider a coordinated or combined presentation of evidence. I hereby further direct the Division of Water Rights Prosecution Team (Prosecution Team) to immediately meet and confer with the California Department of Fish and Wildlife (CDFW) to consider a coordinated or combined presentation of evidence.

Immediately upon all parties' submission of witnesses' proposed testimony, exhibits, lists of exhibits, qualifications, and statements of service, I direct all parties to meet and confer to consider stipulating to the admissibility of testimony and exhibits. The parties shall submit a written memorandum to the Hearing Officer setting forth any such stipulations no later than **December 3, 2014**.

Stanford Vina NOI

Stanford Vina proposes to present 14.5 hours of testimony. As set forth in the October 24, 2014 Notice of Public Hearing (Notice), Stanford Vina shall be allowed one (1) hour total to present all of its direct testimony, absent a showing of good cause for the granting of additional time. Should Stanford Vina desire additional time to present its direct testimony, it shall submit an affidavit setting forth good cause for additional time no later than **November 24, 2014**. I further limit the testimony of its individual witnesses as follows:

- Curtis Milliron: As set forth in the Notice, Mr. Milliron's direct testimony shall be limited to twenty (20) minutes, absent a showing of good cause for the granting of additional time. Should Stanford Vina desire additional time to present Mr. Milliron's direct testimony, it shall set forth good cause for additional time on the record at the hearing.
- Scott Willems: As set forth in the Notice, Mr. Willems' direct testimony shall be limited to twenty (20) minutes, absent a showing of good cause for the granting of additional time. Should Stanford Vina desire additional time to present Mr. Willems' direct testimony, it shall set forth good cause for additional time on the record at the hearing.
- David Rose: The subject of Mr. Rose's proposed testimony, as set forth in Stanford Vina's NOI, does not appear to be relevant to the hearing's issues, and to the extent that the testimony might arguably be relevant it appears that any probative value would be substantially outweighed by the consumption of time. Stanford Vina shall not introduce Mr. Rose's testimony at the hearing, unless I issue a subsequent ruling explicitly permitting his testimony. I will only consider such a ruling upon Stanford Vina's submission of a written offer of proof as to what relevant, non-privileged testimony Mr. Rose might present no later than **November 24, 2014**.
- Dee Jennings Hill: As set forth in the Notice, Ms. Hill's direct testimony shall be limited to twenty (20) minutes, absent a showing of good cause for the granting of additional

time. Should Stanford Vina desire additional time to present Ms. Hill's direct testimony, it shall set forth good cause for additional time on the record at the hearing.

- Nancee Murray: The subject of Ms. Murray's proposed testimony, as set forth in Stanford Vina's NOI, does not appear to be relevant to the hearing's issues, and to the extent that the testimony might arguably be relevant it appears that any probative value would be substantially outweighed by the consumption of time. Stanford Vina shall not introduce Ms. Murray's testimony at the hearing, unless I issue a subsequent ruling explicitly permitting her testimony. I will only consider such a ruling upon Stanford Vina's submission of a written offer of proof as to what relevant, non-privileged testimony Ms. Murray might present no later than **November 24, 2014**.
- Barbara Evoy: The subject of Ms. Evoy's proposed testimony, as set forth in Stanford Vina's NOI, does not appear to be relevant to the hearing's issues, and to the extent that the testimony might arguably be relevant it appears that any probative value would be substantially outweighed by the consumption of time. Stanford Vina shall not introduce Ms. Evoy's testimony at the hearing, unless I issue a subsequent ruling explicitly permitting her testimony. I will only consider such a ruling upon Stanford Vina's submission of a written offer of proof as to what relevant, non-privileged testimony Ms. Evoy might present no later than **November 24, 2014**.
- "Most knowledgeable person in regard to failure of Department of Fish & Wildlife to respond to Public Records Request of [Stanford Vina]:" Testimony regarding CDFW's alleged failure to respond to Stanford Vina's Public Records Act request does not appear to be relevant to the hearing's issues. Stanford Vina, however, proposes to examine a CDFW witness competent to discuss the "number of fish observed in 2014," which may be relevant to the hearing's issues. Consequently, I limit Stanford Vina's introduction of testimony from any heretofore unidentified CDFW employee to the condition of the fishery in Deer Creek in 2014. Stanford Vina shall not introduce the testimony of any heretofore unidentified CDFW employee for any other purpose, unless I issue a subsequent ruling explicitly permitting such testimony. I will only consider such a ruling upon Stanford Vina's submission of a written offer of proof as to what relevant, non-privileged testimony any heretofore unidentified CDFW employee might present no later than **November 24, 2014**.
- "Most knowledgeable person at [the National Marine Fisheries Service] in regard to motivation for failure to comply with Freedom of Information Request for Documents made by [Stanford Vina]:" Testimony regarding the National Marine Fisheries Service's (NMFS) alleged failure to respond to Stanford Vina's Freedom of Information Act request does not appear to be relevant to the hearing's issues. Stanford Vina shall not introduce testimony from any NMFS employee at the hearing, unless I issue a subsequent ruling explicitly permitting such testimony. I will only consider such a ruling upon Stanford Vina's submission of a written offer of proof as to what relevant, non-privileged testimony any NMFS employee might present no later than **November 24, 2014**.
- "Most knowledgeable person or persons working for or representing Deer Creek Irrigation District with knowledge of the measurement practices, diversion practices and facilities used by Deer Creek ID and landowners of Deer Creek ID during the period May 24 through June 20, 2014 to measure water and divert water:" As set forth in the Notice, any witness' direct testimony shall be limited to twenty (20) minutes, absent a showing of

good cause for the granting of additional time. Should Stanford Vina desire additional time to present the direct testimony of a person working for or representing Deer Creek Irrigation District, it shall set forth good cause for additional time on the record at the hearing.

Prosecution Team NOI

As set forth below, I shall grant CDFW's request to intervene as a party. Consequently, the Prosecution Team need not call Paige Uttley, Bill Cowan, or Matthew Johnson in its case-in-chief. As set forth above, however, I strongly encourage the Prosecution Team to consider combining or coordinating its evidentiary presentation with that of CDFW.

I find that the Prosecution Team has demonstrated that the proposed testimony of its four principal witnesses will likely be relevant and non-privileged. I further find that the estimated length of these witnesses' proposed testimony, both individually and as a group, is consistent with the time limits set forth in the Notice.

Rumiano NOI

Rumiano seeks to intervene—I hereby grant Rumiano's request and allow Rumiano to participate as a party to the hearing. As set forth above, I strongly encourage Rumiano to consider combining or coordinating its evidentiary presentation with that of Stanford Vina.

Rumiano proposes to present eight (8) hours of testimony. As set forth in the Notice, Rumiano shall be allowed one (1) hour total to present all of its direct testimony, absent a showing of good cause for the granting of additional time. Should Rumiano desire additional time to present its direct testimony, it shall submit an affidavit setting forth good cause for additional time no later than **November 24, 2014**. I further limit the testimony of its individual witnesses as follows:

- **"Paul Minasian and SVRIC's legal counsel:"** Paul Minasian is listed as Stanford Vina's counsel, and I presume Mr. Minasian will advocate on its behalf at the hearing. Compelling Mr. Minasian's testimony may serve to impair his effectiveness as an advocate on Stanford Vina's behalf. (*Smith, Smith & Kring v. Superior Court* (1997) 60 Cal.App.4th 573, 578.) Rumiano shall not introduce Mr. Minasian's testimony at the hearing, unless I issue a subsequent ruling explicitly permitting his testimony. I shall not consider such a ruling unless: 1) Stanford Vina provides its written, informed consent to Mr. Minasian's testimony no later than **November 24, 2014**; and 2) Rumiano provides a written offer of proof demonstrating what relevant, non-privileged testimony Mr. Minasian might present, and further demonstrating that there is no other source for the evidence Rumiano seeks, no later than **November 24, 2014**. (*Id.* at p. 579; see also *Maxwell v. Superior Court* (1982) 30 Cal.3d 606, 619 fn. 9; *People v. Garcia* (2000) 84 Cal.App.4th 316, 332.) To the extent Rumiano seeks to call any other attorney that represents Stanford Vina, Rumiano shall not introduce that attorney's testimony unless I issue a subsequent ruling explicitly permitting his or her testimony. I will only consider such a ruling upon Rumiano's submission of a written offer of proof setting forth what relevant, non-privileged testimony this attorney might present, and demonstrating that there is no other source for that evidence, no later than **November 24, 2014**. (*Ibid.*)

- Dee Jennings Hill: Rumiano's NOI describes the subject of Ms. Hill's proposed testimony as: "Curtailed order, SVRIC." As described, Ms. Hill's testimony appears to be directed to challenging the factual or legal basis for the curtailment order; such testimony is not relevant to the current proceeding. Consequently, Rumiano shall not introduce Ms. Hill's testimony at the hearing, unless I issue a subsequent ruling explicitly permitting her testimony. I will only consider such a ruling upon Rumiano's submission of a written offer of proof as to what relevant, non-privileged testimony Ms. Hill might present no later than **November 24, 2014**. Regardless, as Stanford Vina proposes to call Ms. Hill, Rumiano remains free to cross-examine her on any subjects relevant to the hearing's issues.
- Tom Hill: Rumiano's NOI describes the subject of Mr. Hill's proposed testimony as: "Curtailed order, SVRIC." As described, Mr. Hill's testimony appears to be directed to challenging the factual or legal basis for the curtailment order; such testimony is not relevant to the current proceeding. Consequently, Rumiano shall not introduce Mr. Hill's testimony at the hearing, unless I issue a subsequent ruling explicitly permitting his testimony. I will only consider such a ruling upon Rumiano's submission of a written offer of proof as to what relevant, non-privileged testimony Mr. Hill might present no later than **November 24, 2014**.
- Mike Wallace: Rumiano's NOI describes the subject of Mr. Wallace's proposed testimony as: "Curtailed order, SVRIC." As described, Mr. Wallace's testimony appears to be directed to challenging the factual or legal basis for the curtailment order; such testimony is not relevant to the current proceeding. Consequently, Rumiano shall not introduce Mr. Wallace's testimony at the hearing, unless I issue a subsequent ruling explicitly permitting his testimony. I will only consider such a ruling upon Rumiano's submission of a written offer of proof as to what relevant, non-privileged testimony Mr. Wallace might present no later than **November 24, 2014**.
- Callie Wood: Rumiano's NOI describes the subject of Ms. Wood's proposed testimony as: "Curtailed order, SVRIC." As described, Ms. Wood's testimony appears to be directed to challenging the factual or legal basis for the curtailment order; such testimony is not relevant to the current proceeding. Consequently, Rumiano shall not introduce Ms. Wood's testimony at the hearing, unless I issue a subsequent ruling explicitly permitting her testimony. I will only consider such a ruling upon Rumiano's submission of a written offer of proof as to what relevant, non-privileged testimony Ms. Wood might present no later than **November 24, 2014**.

CDFW NOI

CDFW seeks to intervene—I hereby grant its request and allow CDFW to participate as a party to the hearing. As set forth above, however, I strongly encourage CDFW to consider combining or coordinating its evidentiary presentation with that of the Prosecution Team.

I find that CDFW has demonstrated that the proposed testimony of its three witnesses will likely be relevant and non-privileged. I further find that the estimated length of these witnesses' proposed testimony, both individually and as a group, is consistent with the time limits set forth in the Notice.

Stanford Vina's Objections and Reservation of Rights

Stanford Vina submitted a document entitled "Objections to Cease & Desist Order Proceeding and Reservation of Rights" (objections) with its NOI. I hereby rule on Stanford Vina's objections as follows:

1. Stanford Vina asserts that it may call additional witnesses and introduce additional exhibits beyond those identified in its NOI. I reserve ruling on allowing such witnesses to testify or admitting such exhibits, and I further reserve my discretion to refuse to admit such witnesses or proposed exhibits for failure to comply with the requirements of the Notice. (Cal. Code Regs., tit. 23, § 648.4.)
2. Stanford Vina asserts that it may introduce argument concerning alleged legal deficiencies in the Board's emergency regulations on the curtailment of diversions in Deer Creek based on insufficient flow (Emergency Regulations) and in Order WR 2014-0022-DWR (Curtailment Order). As set forth in the Notice, the Board has already reached a final decision on whether the Curtailment Order was issued in compliance with applicable law in Order WR 2014-0028. Consequently, I hereby bar Stanford Vina from introducing any argument or evidence that pertains solely to alleged legal deficiencies in the Emergency Regulations or Curtailment Order.
3. I note Stanford Vina's assertion of prejudice in its ability to prepare for the hearing. I find this argument unpersuasive, and I decline to postpone the hearing.
4. I note Stanford Vina's argument—numbered as 2.3 in its objections—generally asserting that insufficient evidence exists that Stanford Vina violated the Curtailment Order. Whether Stanford Vina has violated the Curtailment Order is set forth as a key issue in the Notice, and Stanford Vina may introduce at the hearing any relevant evidence or argument on that question consistent with the Notice's requirements, my rulings, and applicable law.
5. I note Stanford Vina's argument—numbered as 2.4 in its objections—further asserting that insufficient evidence exists that Stanford Vina violated the Curtailment Order. Whether Stanford Vina has violated the Curtailment Order is set forth as a key issue in the Notice, and Stanford Vina may introduce at the hearing any relevant evidence or argument on that question consistent with the Notice's requirements, my rulings, and applicable law.
6. I deny Stanford Vina's request to postpone the hearing pending the resolution of its action against the State Water Board in Superior Court. I bar Stanford Vina from introducing any evidence of its alleged proposed stipulation to postpone the hearing, as such evidence is not relevant to the hearing's issues. Stanford Vina's desire to introduce such evidence before the Superior Court is beyond the scope of this proceeding.
7. Stanford Vina's assertion regarding the claim and recovery of its costs in participating in this hearing—numbered as 2.6 in its objections—is beyond the scope of this proceeding.

Delivery of Submissions

Submissions required by this pre-hearing ruling shall be submitted to Staff Counsel Carlos Mejia, and addressed as set forth below, with the strong preference that they be sent via e-mail:

Carlos Mejia, Staff Counsel
Office of Chief Counsel
State Water Resources Control Board

By E-mail: carlos.mejia@waterboards.ca.gov

By Hand Delivery: Joe Serna, Jr. Cal/EPA Building
1001 I Street, 2nd Floor, Sacramento, CA 95814

By Fax: (916) 341-5199

All hand-delivered submittals should be date-stamped as received by the Division of Water Rights' Records Unit on the second floor of the Joe Serna, Jr. Cal/EPA Building at the above address prior to or on the required date of submittal. Persons delivering submittals by hand must first check in with lobby security personnel on the first floor.

Further Rulings

I shall issue any necessary further rulings in advance of, or at, the hearing. Non-controversial procedural questions concerning this letter may be directed to Mr. Mejia by e-mail at carlos.mejia@waterboards.ca.gov or by telephone at (916) 341-5184.

Sincerely,



Frances Spivy-Weber
Hearing Officer
Vice-Chair, State Water Resources Control Board

cc: **[all via email only]**
Vice-Chair Frances Spivy-Weber, Executive Office
Board Member Steven Moore, Executive Office
Michael Buckman, Division of Water Rights
Jane Farwell, Division of Water Rights
Ernest Mona, Division of Water Rights
Carlos Mejia, Office of Chief Counsel