

State Water Resources Control Board

February 11, 2016

Michael E. Vergara
Somach Simmons & Dunn
500 Capitol Mall, Suite 1000
Sacramento, CA 95814-2403

via U.S. Mail and E-mail

Dear Mr. Vergara:

BYRON BETHANY IRRIGATION DISTRICT ADMINISTRATIVE CIVIL LIABILITY COMPLAINT AND THE WEST SIDE IRRIGATION DISTRICT DRAFT CEASE AND DESIST ORDER HEARINGS: RESPONSE TO FEBRUARY 5, 2016 SUBPOENAS DUCES TECUM ISSUED TO MICHAEL LAUFFER AND CUSTODIAN OF RECORDS

This letter constitutes the State Water Resources Control Board's (State Water Board) response to Byron-Bethany Irrigation District's subpoenas duces tecum issued to me and the State Water Board's Custodian of Records on Friday, February 5, 2016. The subpoenas seek four categories of documents concerning an alleged request by the State Water Board for a criminal background check of elected board members of the Byron-Bethany Irrigation District (BBID) or its general manager. As detailed below, there are no documents responsive to the requests. No documents will be produced in response to the subpoenas, and no documents are being withheld on the basis of privilege.

Separation of Functions

Because of the ethical wall established between the enforcement team and the advisory team for the pending adjudicative proceedings, the response to your subpoenas is being handled by separate counsel for each team. The document search conducted under the two subpoenas issued to me and the Custodian of Records included State Water Board staff *other than* staff of the Office of Enforcement, staff of the Office of Delta Watermaster, and Division of Water Rights Assistant Deputy Director John O'Hagan and the staff reporting to him (collectively, Enforcement Team) and the documents in the Enforcement Team's possession. Consistent with Public Records Act requests submitted in this proceeding, Office of Enforcement attorney Andrew Tauriainen conducted a separate search of the Enforcement Team documents in response to the third subpoena.

No Responsive Documents

Except as to the Enforcement Team and its documents, under my direction a search of documents potentially responsive to the subpoenas has been done throughout the State Water Board's offices and divisions.

- No documents have been located that concern, refer and/or relate to the State Water Board's authority to conduct criminal background checks on Byron-Bethany Irrigation District's (BBID) elected Board members and/or General Manager (Category 1).
- No documents have been located that reflect requests made by the State Water Board and/or any of its agents, to any individual and/or entity to conduct a criminal background check on one or more of BBID's elected Board members and/or General Manager (Category 2).
- No documents have been located that concern, refer and/or relate to a criminal background check performed on one or more of BBID's elected Board members and/or General Manager (Category 3).
- No documents have been located that concern, refer and/or relate to documents and/or information produced to the State Water Board and/or any of its agents, in response to a criminal background check performed on one or more of BBID's elected Board members and/or General Manager (Category 4).

While your subpoenas request the production of documents, Category 1 concerns the authority of the State Water Board to request a criminal background check. Such authority calls for legal conclusions that may be drawn from a legal analysis of the California Code and relevant authorities. We have not been able to locate any document in the State Water Board's possession that opines on the authority of the State Water Board to request a criminal background check, but if such a document existed, it would likely be subject to attorney-client privilege or attorney work product protections. The fact that my office has not opined on the authority of the State Water Board to request a criminal background check does not mean the California Code would preclude the State Water Board, in an appropriate circumstance, from requesting such a check. The authority is simply not something the State Water Board has considered or exercised.¹

Quite simply, the State Water Board has no documents in any way relating to a criminal background check on BBID board members or its general managers, and has no reason to believe anyone acting at the behest of the State Water Board requested such a criminal background check.

Sincerely,



Michael A.M. Lauffer
Chief Counsel

cc: Service List (via e-mail only)

¹ Even though employers may be authorized to conduct criminal background checks of employees, the State Water Board does not request criminal background checks on its employees. In addition, while the State Water Board issues a variety of licenses, including occupational licenses in its waste water and drinking water operator certification programs, the board does not request criminal background checks as part of its licensing programs.

**SERVICE LIST OF PARTICIPANTS
THE WEST SIDE IRRIGATION DISTRICT
CEASE AND DESIST ORDER HEARING
(October 8, 2015, Revised 12/18/15)**

| 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.) | |
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| <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 Harrigfeld Janelle Krattiger Herum\Crabtree\Suntag 5757 Pacific Ave., Suite 222 Stockton, CA 95207 jzolezzi@herumcrabtree.com kharrigfeld@herumcrabtree.com jkrattiger@herumcrabtree.com</p> |
| <p>STATE WATER CONTRACTORS Stephanie 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 & Girard 400 Capitol Mall, 27th Floor Sacramento, CA 95814 dohanlon@kmtg.com rakroyd@kmtg.com</p> <p>Philip Williams of Westlands Water District pwilliams@westlandswater.org</p> |
| <p>SOUTH DELTA WATER AGENCY John Herrick, Esq. Dean Ruiz 4255 Pacific Ave., Suite 2 Stockton, CA 95207 jherrlaw@aol.com dean@hprlaw.net</p> | <p>CENTRAL DELTA WATER AGENCY Jennifer Spaletta Spaletta Law PC PO Box 2660 Lodi, CA 95241 jennifer@spalettalaw.com</p> <p>Dante Nomellini and Dante Nomellini, Jr. Nomellini, Grilli & McDaniel ngmplcs@pacbell.net dantejr@pacbell.net</p> |
| <p>CITY AND COUNTY OF SAN FRANCISCO 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 Kincaid O'Laughlin & Paris LLP 2617 K Street, Suite 100 Sacramento, CA 95814 vkinaid@olaughlinparis.com towater@olaughlinparis.com (revised 12/18/15)</p> |

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| <p>CALIFORNIA DEPARTMENT OF WATER RESOURCES Robin McGinnis, Attorney PO Box 942836 Sacramento, CA 94236-0001 robin.mcginis@water.ca.gov</p> | <p>BYRON BETHANY IRRIGATION DISTRICT Daniel Kelly Somach Simmons & Dunn 500 Capitol Mall, Suite 1000, Sacramento, CA 95814 dkelly@somachlaw.com</p> |
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**SERVICE LIST OF PARTICIPANTS
BYRON-BETHANY IRRIGATION DISTRICT
ADMINISTRATIVE CIVIL LIABILITY HEARING
(09/02/15; Revised: 09/10/15; Revised 10/06/15; Revised 10/22/15, 12/18/15)**

| PARTIES | |
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| <p>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> | |
| <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 Jonathan Knapp Office of the City Attorney 1390 Market Street, Suite 418 San Francisco, CA 94102 jonathan.knapp@sfgov.org</p> <p>Robert E. Donlan Ellison, Schneider & Harris L.L.P. 2600 Capitol Avenue, Suite 400 Sacramento, CA 95816 (916) 447-2166 red@eslawfirm.com</p> |
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| <p>Richard Morat 2821 Berkshire Way Sacramento, CA 95864 rjmorat@gmail.com</p> | <p>San Joaquin Tributaries Authority Valerie Kincaid O’Laughlin & Paris LLP 2617 K Street, Suite 100 Sacramento, CA 95814 vkincaid@olaughlinparis.com towater@olaughlinparis.com lwood@olaughlinparis.com</p> <p>(revised 12/18/15)</p> |
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