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10 Attorneys for
Central Delta Water Agency

11
12 BEFORE THE STATE WATER RESOURCES CONTROL BOARD

13
14 PUBLIC HEARING TO DETERMINE
15 WHETHER TO ISSUE A CEASE AND
DESIST ORDER AGAINST WEST SIDE
16 IRRIGATION DISTRICT

**CENTRAL DELTA WATER AGENCY'S
NOTICE OF INTENT TO APPEAR,
REQUEST FOR EXTENSION OF TIME
AND NOTICE OF INTENT TO CONDUCT
DISCOVERY**

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18 Pre-hearing conference date: October 19, 2015
19 Time: 9:00 a.m.
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1 Central Delta Water Agency (“CDWA”) respectfully submits this Notice of Intent to
2 Appear in the West Side Irrigation District (“WSID”) Cease and Desist Order Hearing proceeding
3 (“CDO”) and raises objections to the current scheduling for this matter that cannot be timely
4 addressed by waiting for the October 19th pre-hearing conference.

5 **1. CDWA Intends to Appear in the WSID CDO Hearing**

6 The State Water Resources Control Board (“Board”) has scheduled the public hearing in
7 this matter two months after issuing the notice of public hearing. The purpose of the hearing is to
8 determine whether a CDO should be issued against WSID, a diverter from Delta channels, for
9 diverting water in 2015 during a time that the Board’s prosecution staff alleges such diversions
10 were unlawful.

11 CDWA intends to participate in the hearing because a fundamental issue in the hearing
12 will be the Board’s determination of water availability in Delta channels. The CDWA Notice of
13 Intent to Appear is attached hereto as **Exhibit A**. The water availability issue is critically
14 important to landowners within CDWA. Any determinations made as part of the WSID CDO
15 proceeding could have impacts for CDWA landowners. CDWA’s participation in this proceeding
16 is not a waiver of CDWA’s position that the Board lacks jurisdiction to regulate WSID’s
17 diversion in the first place.

18 **2. Extensions of Time are Warranted to Allow for Discovery**

19 A determination of water availability, or unavailability, requires factual testimony. The
20 Board prosecution team will have an initial burden to prove water was unavailable for diversion
21 by WSID. Participating parties may then present their own evidence on this issue. The parties
22 cannot meaningfully prepare for and participate in a hearing involving these complex factual
23 issues without first conducting discovery to learn the complete factual basis for the prosecution
24 team’s conclusions. Parties are expressly entitled to conduct discovery before the hearing for this
25 purpose. (See, e.g., Wat. Code, §§ 1080, 1100 [“The board or any party to a proceeding before it
26 may, in any investigation or hearing, cause the deposition of witnesses residing within or without
27 the state to be taken in the manner prescribed by law for depositions in civil actions in the
28 superior courts of this state.”]; 23 C.C.R. § 649.6; see also Gov. Code, §§ 11450.10, 11450.20,
11450.50.)

1 As currently scheduled, there is no time available to conduct discovery before the
2 identification of witnesses (one month after notice of hearing), filing of proposed testimony (two
3 months after notice of hearing), or the hearing (less than 2.5 months after notice of hearing).
4 Preparing expert testimony and completing discovery takes time. CDWA, for example, must
5 provide an individual at least 20 days to produce records requested in a deposition subpoena.
6 (Code of Civ. Proc., § 2020.410(b).) Initial discovery often leads to further discovery, requiring
7 additional time.

8 Requiring the parties to proceed on such a tight time schedule, without a full and fair
9 opportunity to conduct discovery, would be a violation of due process. (See, e.g., *People v.*
10 *Alexander* (2010) 49 Cal.4th 846, 934, *as modified on denial of reh'g* (Sept. 29, 2010) [“ ‘To
11 effectuate the constitutional rights to counsel and to due process of law, an accused must . . . have
12 a reasonable opportunity to prepare a defense and respond to the charges.’ ”] [citation omitted];
13 *Sallas v. Municipal Court* (1978) 86 Cal.App.3d 737, 742 [“due process of law requires that an
14 accused . . . have a reasonable opportunity to prepare and present his defense. . . .”].)

15 **3. The CDO Should be Stayed Pending Resolution of Pending Litigation on the** 16 **Same Issues**

17 CDWA also objects to the Board’s decision to proceed with a CDO hearing against WSID
18 given the already pending litigation filed by WSID and others, including CDWA, over the factual
19 accuracy of the Board’s water availability determinations during 2015. The Board and Courts
20 have concurrent jurisdiction to address certain water rights issues. (See *National Audubon*
21 *Society v. Superior Court* (1983) 33 Cal.3d 419, 451 [discussing Water Code statutes that
22 “necessarily imply that the superior court has concurrent original jurisdiction in suits to determine
23 water rights”].) WSID sued the Board over its water availability determinations and curtailment
24 notices before the Board decided to proceed with a CDO against WSID, raising the same factual
25 and legal issues. It would be improper for the Board to try to race to decide (as a quasi-judicial
26 tribunal) the same disputed factual and legal issues in this CDO hearing which are already
27 pending in litigation in a trial court against the Board (as a party).

28 It is also unnecessary and a waste of party resources. Any remaining CDO issues can be
decided, if necessary, at the conclusion of the pending litigation.

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For these reasons, CDWA urges the Board to place the WSID CDO proceeding on hold, or alternatively, at a minimum, continue the hearing date and deadlines related to the proceeding for at least one year to allow adequate time for the discovery.

Respectfully submitted,

Dated: October 2, 2015

SPALETTA LAW PC



By:

JENNIFER L. SPALETTA
Attorney for Central Delta Water Agency

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EXHIBIT A

NOTICE OF INTENT TO APPEAR

Central Delta Water Agency plans to participate in the water right hearing regarding
 (name of party or participant) Public Hearing to determine whether to issue a cease and desist order
 against West Side Irrigation District

scheduled to commence

Pre-hearing conference on 10/19/15; hearing to commence on 11/12/15


Check all that apply:

- I/we intend to present a policy statement only.
- I/we intend to participate by cross-examination or rebuttal only.
- I/we decline electronic service of hearing-related materials.
- I/we plan to call the following witnesses to testify at the hearing.

NAME	SUBJECT OF PROPOSED TESTIMONY	ESTIMATED LENGTH OF DIRECT TESTIMONY	EXPERT WITNESS (YES/NO)
	CDWA reserves the right to amend this notice and identify witnesses based on information obtained in discovery.		

(If more space is required, please add additional pages or use reverse side.)

Name, Address, Phone Number and Fax Number of Attorney or Other Representative:

Signature:  Dated: October 2, 2015

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