



Jeanne M. Zolezzi
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October 2, 2015

VIA ELECTRONIC MAIL

Division of Water Rights
State Water Resources Control Board
Attention: Ernest Mona
Post Office Box 2000
Sacramento, CA 95812-2000
wrhearing@waterboards.ca.gov

Re: The West Side Irrigation District CDO Hearing Notice of Intent to Appear

As mandated by the State Water Resources Control Board's ("**State Water Board**") September 1, 2015 Notice of Public Hearing and Pre-Hearing Conference for the Cease and Desist Order against West Side Irrigation District [sp] ("**WSID Hearing**"), attached is a Notice of Intent to Appear on behalf of The West Side Irrigation District ("**WSID**")¹.

The timeline proposed by the State Water Board in the Hearing Notice will not allow WSID to properly prepare for and present its case, thereby creating significant due process issues. Thirty days to identify witnesses to testify at a hearing that could deprive WSID of its property rights is not sufficient. Similarly, sixty days in which to completely develop testimony and exhibits is insufficient. WSID requires additional time to identify witnesses to testify at the hearing currently scheduled to commence on November 12, 2015.

¹ WSID submits its Notice of Intent to Appear without waiving its objections to the State Water Board's improper assertion of jurisdiction over the subject matter of the WSID Hearing. The Draft CDO against WSID was issued on July 16, 2015. Prior to the issuance of the Draft CDO, WSID filed an action in Sacramento County Superior Court challenging the State Water Board's unlawful curtailment of WSID's water right and otherwise unlawful conduct, including the State Water Board's unlawful issuance of the June 12, 2015 Notice of Unavailability of Water And Need For Immediate Curtailment (Curtailment Notice), and its illegal determination of the unavailability of water. WSID's action challenging the State Water Board's unlawful conduct is currently pending before the Santa Clara Superior Court. Because WSID's action was filed prior to the State Water Board's issuing the Draft CDO, the Santa Clara Superior Court has jurisdiction over the matter. As such, the State Water Board's attempt to undermine the Court's jurisdiction over the subject matter of the pending litigation is unlawful and otherwise inappropriate. While the Santa Clara Superior Court denied WSID's application for stay to prevent the State Water Board from unlawfully impeding on the Court's exercise of jurisdiction over the subject matter of the pending litigation, WSID will appeal the court's failure to act and reserves its rights.

There are numerous factual issues to be explored at the hearing, including (1) the foundation of whether or not water was, in fact, available for diversion by WSID, (2) the legal requirements for diverting treated waste water, and (3) the legal requirements for and the factual circumstances surrounding WSID's diversion of irrigation return flow. WSID will be required to undertake a hydrologic analysis, analyze the data and modeling relied upon by the State Water Board in issuing the Curtailment Notice, and conduct discovery in preparation for the Public Hearing. WSID cannot be expected to engage consultants and have expert witnesses prepared to testify within the short time frames provided for in the Hearing Notice.

WSID respectfully requests that the WSID Hearing be rescheduled to take place after the rescheduled public hearing regarding the Byron-Bethany Irrigation District. While the enclosed Notice of Intent to Appear will allow the State Water Board to determine the parties to be involved in the WSID Hearing, we believe the witness lists should be preliminary, and parties should be allowed to amend the witness lists prior to the hearing after discovery has been completed.

Very truly yours,



JEANNE M. ZOLEZZI
Attorney-at-Law

cc: Ms. Frances Spivey-Weber
Andrew Tauriainen, Esq.
The West Side Irrigation District

NOTICE OF INTENT TO APPEAR

The West Side Irrigation District plans to participate in the water right hearing regarding
(name of party or participant)

Draft Cease and Desist Order
Against
West Side Irrigation District

The Public Hearing will commence on
Thursday, November 12, 2015 and continue, if necessary,
on November 13 and 16, 2015
at 9:00 a.m.

1) Check only one (1) of the following:

- I/we intend to present a policy statement only.
- I/we intend to participate by cross-examination or rebuttal only.
- I/we plan to call the following witnesses to testify at the hearing. (Fill in the Following Table)

NAME	SUBJECT OF PROPOSED TESTIMONY	ESTIMATED LENGTH OF DIRECT TESTIMONY	EXPERT WITNESS (YES/NO)
	(SEE ATTACHED)		

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

2) Fill in the following information of the Participant, Party, Attorney, or Other Representative:

Name (Print): Jeanne Zolezzi, Karna Harrigfeld & Janelle Krattiger

Mailing

Address: 5757 Pacific Ave., Suite 222

Stockton, CA 95207

Phone Number: (209) 472-7700 Fax Number: (209) 472-7986

E-mail: jzolezzi@herumcrabtree.com; kharrigfeld@herumcrabtree.com;
jkrattiger@herumcrabtree.com

Optional:

- I/we decline electronic service of hearing-related materials.

Signature:  Date: 10/2/15

Attachment to
NOTICE OF INTENT TO APPEAR

Draft Cease and Desist Order
Against
The West Side Irrigation District

NAME	SUBJECT OF PROPOSED TESTIMONY	ESTIMATED LENGTH OF DIRECT TESTIMONY	EXPERT WITNESS (YES/NO)
David Kaiser	WSID Water Use	20 min	NO
Tom Burke, P.E.	Water Availability/Flow Downstream	30 min	YES
Nick Bonsignore, P.E.	Water Availability	30 min	YES
Kathy Mrowka	Water Availability	20 min	NO
Brian Coats	Water Availability	20 min	NO
Jeff Yeazel	Water Availability	10 min	NO
John O'Hagan	Water Availability	15 min	NO
Stephen NemethDWR	Full Natural Flow	15 min	NO
Michael George	Water Availability	10 min	NO
Tom Howard	Water Availability	10 min	NO

WSID reserves the right to amend or supplement this draft witness list any time prior to the hearing based upon relevant information discovered or developed subsequent to the submittal of this draft witness list.