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April 27, 2016

Via Electronic Mail

Frances Spivey-Weber
Vice Chair
Division of Water Rights
State Water Resources Control Board
1001 I Street, 2nd Floor
Sacramento, CA 95814

Tam M. Doduc
Board Member
Division of Water Rights
State Water Resources Control Board
1001 I Street, 2nd Floor
Sacramento, CA 95814

Re: BBID ACL Complaint -ENF01951

Dear Mses. Spivey-Weber and Doduc:

The purpose of this letter is to state the Byron-Bethany Irrigation District's (BBID) objection to the close of the evidentiary record in Enforcement Action ENF01951 (ENF01951) without dismissing the Administrative Civil Liability (ACL) Complaint in ENF01951.

After the conclusion of the Prosecution Team's case and chief, BBID and others made motions for non-suit, for judgment, and/or to dismiss ENF01951 and ENF01949. After argument on the motions, the Hearing Team provided the Prosecution Team an opportunity to re-open its case and chief to allow redirect testimony from all of the Prosecution Team's case-in-chief witnesses. The Hearing Officers provided the Prosecution Team with this opportunity to present "the best evidence of actual supply and demand available now during the period of alleged illegal diversions." (Transcript of Proceedings, In the Matter of: Byron Bethany Irrigation District (BBID) and The West Side Irrigation District (WSID) Joint Hearing, Volume 3, March 23, 2016, 103:8-22.) The Hearing Officers did not set time limits for redirect testimony, noting that it was important that the Hearing Team "fully understand this issue." (*Id.*, 104:5-6.)

Following the completion of further redirect testimony and re-cross examination, the Hearing Officers suspended the hearing until Monday, March 28, 2016. BBID was to begin presenting its case-in-chief that day. However, on Friday, March 25, 2016, the Hearing Officers issued a Procedural Ruling suspending Phase 1 and subsequent phases of the hearings and vacating the remaining hearing dates in both ENF01951 and ENF01949, to allow the State Water Resources Control Board (SWRCB) Board Members to deliberate factual issues presented to date in the hearings. The Procedural Order made clear that it was not a ruling on the merits of ENF01951 or ENF01949 and that a further order would be issued.

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On April 5, 2016, the SWRCB met in closed session “to deliberate on procedural decisions to be reached in the hearing proceedings regarding an Administrative Civil Liability Complaint against Byron-Bethany Irrigation District and draft Cease and Desist Order against The West Side Irrigation District.” Then, on April 20, 2016, the Hearing Officers issued another Procedural Order, “closing the evidentiary records” in ENF01951 and ENF01949. The April 20, 2016 Procedural Order made clear that it was not a determination on the merits. As such, ENF01951 is still pending and the threat of a fine in excess of \$5 million still hangs over BBID, its farmers and residents.

Having closed the evidentiary record in ENF01951 without BBID presenting evidence in its defense, the SWRCB cannot find BBID in violation of Water Code section 1052, as alleged in the ACL Complaint. While it is unclear why the SWRCB has not yet dismissed ENF01951 given what has transpired, the continued maintenance of ENF01951 injures BBID, its farmers and landowners. As Messrs. Lopez and Arnaudo explained in their policy statements, with the uncertainty of this action hanging over BBID, they have had to lay off employees and their businesses are in jeopardy. It is BBID’s understanding that some landowners are having difficulty obtaining bank financing for agricultural operations this year because of the specter of a \$5 million fine still hanging over BBID. It is unfair to those who rely on water supplied by BBID to suffer as a result of the continued delay in dismissing ENF01951.

With the remaining hearing dates vacated, and the evidentiary record closed, the SWRCB must take the final step and dismiss ENF01951 so that the farmers and residents within BBID can get back to their business and maintain not only their livelihoods, but the livelihoods of those they employ – those livelihoods that continue to be at risk because of the existence of ENF01951.

Very truly yours,



Daniel Kelly

DK:yd

cc: Michael Lauffer (*via electronic mail*)
Congressman Jeff Denham (*via electronic mail*)
Senator Adam Gray (*via electronic mail*)
Senator Cathleen Galgiani (*via electronic mail*)
Service List (*via electronic mail*)

**SERVICE LIST OF PARTICIPANTS
BYRON-BETHANY IRRIGATION DISTRICT
ADMINISTRATIVE CIVIL LIABILITY HEARING**

(Revised 9/2/15; Revised: 9/11/15)

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**SERVICE LIST
WEST SIDE IRRIGATION DISTRICT
CEASE AND DESIST ORDER HEARING**

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