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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF SANTA CLARA

13 Coordination Proceeding Special title (Rule
14 3.550)

16 CALIFORNIA WATER CURTAILMENT
17 CASES,

Case No. 1-15-CV-285182

JUDICIAL COUNCIL COORDINATION
PROCEEDING NO. 4838

JOINT CASE MANAGEMENT
CONFERENCE STATEMENT

Date: August 12, 2016
Time: 10:00 a.m.
Dept: 1
Judge: The Honorable Peter H. Kirwan

21 Pursuant to California Rules of Court, rule 3.725 and the Guidelines and Protocols of the
22 Complex Civil Litigation Department of the Santa County Superior Court, the parties to the
23 above-entitled coordinated cases submit the following Joint Case Management Conference
24 Statement.

25 **I. Parties**

26 *San Joaquin Tributaries Authority, Oakdale Irrigation District, and South San Joaquin*
27 *Irrigation District (Plaintiffs and Petitioners) v. California State Water Resources Control Board*
28

1 (*Defendant and Respondent*): Petition for Writ of Mandate and Verified Complaint for
2 Declaratory and Injunctive Relief filed on June 19, 2015

3 *Byron-Bethany Irrigation District (Petitioner and Plaintiff) v. California State Water*
4 *Resources Control Board, Executive Director Thomas Howard, and Delta Watermaster Michael*
5 *George (Respondents and Defendants)*: First Amended Petition for Writ of Mandate and
6 Complaint for Declaratory and Injunctive Relief and Damages filed on September 2, 2015

7 *Patterson Irrigation District (Petitioner and Plaintiff) v. California State Water Resources*
8 *Control Board and Executive Director Thomas Howard (Respondents and Defendants)*:
9 Amended and Supplemental Petition for Writ of Mandate, Writ of Mandate, Complaint for
10 Declaratory and Injunctive Relief filed on September 10, 2015

11 *Banta-Carbona Irrigation District (Petitioner and Plaintiff) v. California State Water*
12 *Resources Control Board and Executive Director Thomas Howard (Respondents and*
13 *Defendants)*: Amended and Supplemental Petition for Writ of Administrative Mandate, Writ of
14 Mandate, Complaint for Declaratory and Injunctive Relief filed on September 10, 2015

15 *The West Side Irrigation District, Central Delta Water Agency, South Delta Water Agency,*
16 *and Woods Irrigation Company (Petitioners and Plaintiffs) v. California State Water Resources*
17 *Control Board and Executive Director Thomas Howard (Respondents and Defendants)*: Second
18 Amended and Supplemental Petition for Writ of Administrative Mandate, Writ of Mandate,
19 Complaint for Declaratory and Injunctive Relief filed on September 6, 2015

20 **II. Summary of the Current Status of the Coordinated Actions**

21 On September 24, 2015, this Court issued an order after hearing denying Byron-Bethany
22 Irrigation District's (BBID) and the West Side Irrigation District's (WSID) motions to stay and/or
23 enjoin the enforcement actions brought by the State Water Resources Control Board's (State
24 Water Board) Enforcement Unit against BBID and WSID pending resolution of the districts'
25 legal claims before this Court.

26 On October 15, 2015, BBID and WSID filed a petition for writ asking the Sixth Appellate
27 District to direct this Court to vacate its September 24, 2015 order. (*Byron-Bethany Irrigation*
28 *District et al. v. Superior Court*, Court of Appeal for the Sixth Appellate District, Case No.

1 H042878.) On November 23, 2015, BBID and WSID filed with this Court a Notice of Appeal
2 from the Court's September 24, 2015 order. On December 28, 2015, BBID and WSID filed with
3 the Sixth Appellate District a motion for stay of the State Water Board administrative
4 enforcement actions pending ruling on the petition for writ. On February 17, 2016, the Sixth
5 Appellate District lodged and received the notice of appeal. (*West Side Irrigation District et al. v.*
6 *State Water Resources Control Board*, Court of Appeal for the Sixth Appellate District, Case No.
7 H043260.) On February 2, 2016, the Sixth Appellate District issued an order denying BBID and
8 WSID's petition for writ of mandate, prohibition, or other appropriate relief and the districts'
9 request for stay of the State Water Board enforcement proceedings. On June 8, 2016, BBID and
10 WSID filed an abandonment of their appeal.

11 On January 28, 2016, this Court issued an order vacating the February 19, 2016 hearings
12 scheduled to consider the five demurrers that the State Water Board filed regarding the five
13 amended petitions and complaints brought against the State Water Board. The order also vacated
14 the hearings scheduled to consider the Central Delta Water Agency and South Delta Water
15 Agency motion to intervene in the coordinated action brought by the San Joaquin Tributaries
16 Authority, the Westlands Water District motion to intervene in the coordinated action brought by
17 WSID, the Central Delta Water Agency, South Delta Water Agency, and Woods Irrigation
18 Company, and the State Water Contractors motion to intervene in all five of the coordinated
19 actions. Those motions are now set to be heard August 12, 2016.

20 With regard to the administrative enforcement proceedings against BBID and WSID before
21 the State Water Board, the hearing officers consolidated part of the two enforcement actions to
22 receive evidence whether water diverted by BBID and WSID, if any, was unavailable under their
23 respective claims of right. The hearing officers set the consolidated portion of the enforcement
24 proceedings for hearing on March 21, 2016. After the prosecution team presented testimony
25 regarding whether water was available for diversion under BBID's and WSID's respective claims
26 of right, parties to the proceeding moved for dismissal on the grounds that the prosecution team
27 had failed to carry its burden of proof. After hearing oral and written arguments regarding the
28 motion, and allowing the prosecution team to conduct redirect examination of its witnesses, the

1 hearing officers suspended the hearing and closed the evidentiary record. At a June 7, 2016
2 meeting, on its own motion, the State Water Board adopted an order dismissing the enforcement
3 actions against BBID and WSID. The State Water Board order, Order WR 2016-0015, explained
4 that “[w]ithout adequate testimony to explain and support the manner in which the water
5 availability analysis was constructed and used, and given the potential magnitude of the
6 discrepancies in the water availability analyses on which the Prosecution Team based its case, we
7 are unable to find that the Prosecution Team has carried its burden of proof.” (State Water Board
8 Order WR 2016-0015, attached hereto as Exh. A.)

9 On July 7, 2016, three cases were filed in Sacramento County Superior Court challenging
10 State Water Board Order WR 2016-0015, which dismissed the actions against BBID and WSID.
11 A stipulation to coordinate those cases as add-ons before this court is currently circulating to the
12 parties for signature. The three Sacramento cases are:

- 13 • *West Side Irrigation District; Patterson Irrigation District; Banta-Carbona Irrigation*
14 *District; West Stanislaus Irrigation District; Central Delta Water Agency; South*
15 *Delta Water Agency v. State Water Resources Control Board*, Sacramento County
16 Superior Court No. 34-2016-80002387.
- 17 • *Byron-Bethany Irrigation District v. State Water Resources Control Board*,
18 Sacramento County Superior Court No. 34-2016-80002388.
- 19 • *San Joaquin Tributaries Authority v. State Water Resources Control Board*,
20 Sacramento County Superior Court No. 34-2016-80002389

21 **III. Significant Procedural and Practical Issues.**

22 **A. Position of the Respondents and Defendants State Water Board et al.**

23 The State Water Board respectfully submits the following significant procedural and
24 practical issues that are presently before the Court given the current status of the litigation.

25 *1. Add-On Coordination of New Actions*

26 As noted above, a number of parties that are petitioners/plaintiffs in the present coordinated
27 actions have filed three separate lawsuits in Sacramento County Superior Court challenging the
28 State Water Board’s order, Order WR 2016-0015, dismissing the administrative water right

1 enforcement actions directed against BBID and WSID. The State Water Board has circulated a
2 stipulation among all of the parties to the present coordinated actions and the three new actions to
3 add-on the three new cases to the present coordinated actions. As of July 27, 2016, the State
4 Water Board has not received responses to its proposed stipulation from all of the parties. If the
5 State Water Board and the other parties cannot reach agreement to add the new actions to the
6 present coordinated actions, then the State Water Board will move this Court to add the new
7 actions as authorized by section 404.4 of the Code of Civil Procedure and Rule 3.544 of the
8 California Rules of Court.

9 2. *BBID and WSID Memoranda of Costs*

10 On July 12, 2016, BBID filed a memorandum of costs with this Court that seeks recovery
11 of costs that BBID allegedly incurred as a party before the State Water Board water right
12 enforcement proceeding. On July 27, 2016, the State Water Board filed a motion to strike and/or
13 tax costs in response to BBID's memorandum of costs that is set for hearing on November 18,
14 2016. On July 18, 2016, WSID filed a memorandum of costs with this Court that seeks recovery
15 of costs that WSID allegedly incurred as a party before the State Water Board water right
16 enforcement proceeding. The State Water Board also intends to file a motion to strike and/or tax
17 costs as to the WSID memorandum of costs.

18 3. *BBID and WSID Motions for Attorneys Fees*

19 On July 7, 2016, both BBID and WSID file motions for attorneys fees with this Court that
20 seek recovery for attorneys fees allegedly incurred by BBID and WSID as parties before the State
21 Water Board's water right enforcement proceeding. These motions have been set for hearing on
22 November 18, 2016 before this Court. On July 7, 2016, BBID filed what appears to be an
23 identical motion for attorneys fees with the Sacramento County Superior Court in *Byron-Bethany*
24 *Irrigation District v. State Water Resources Control Board*, Sacramento County Superior Court
25 No. 34-2016-80002388. On July 7, 2016, WSID also filed what appears to be an identical motion
26 for attorneys fees with the Sacramento County Superior Court in *West Side Irrigation District;*
27 *Patterson Irrigation District; Banta-Carbona Irrigation District; West Stanislaus Irrigation*
28 *District; Central Delta Water Agency; South Delta Water Agency v. State Water Resources*

1 *Control Board*, Sacramento County Superior Court No. 34-2016-80002387. The WSID motion
2 filed in Sacramento County is presently not scheduled for hearing. The BBID motion filed in
3 Sacramento County is scheduled for hearing on January 13, 2016.

4 *4. BBID's Motion for Leave to File an Amended Complaint*

5 Pursuant to this Court's direction at the July 12, 2016 hearing on BBID's *ex parte* motion
6 for leave to file an amended complaint and motion to vacate the demurrer hearings, counsel for
7 BBID and the State Water Board engaged in a meet and confer to determine whether the State
8 Water Board would agree to stipulate to grant BBID leave to file an amended complaint.
9 Regretfully, BBID and the State Water Board could not reach agreement as to such a stipulation.
10 On July 27, 2016, BBID filed a motion for leave to file an amended complaint in the present
11 coordinated actions. BBID's motion is set for hearing on September 2, 2016.

12 **B. Position of Petitioner Byron-Bethany Irrigation District**

13 *1. Regarding the Pending Motions for Intervention:*

14 BBID will be opposing the interventions by SWC and DWR, currently scheduled for
15 hearing on August 12, 2016. As a result of the BBID's pending Motion for Leave to File a
16 Second Amended Petition for Writ of Mandate/Complaint (SAC), discussed below, BBID
17 proposed that the pending Motions to Intervene, along with all pending Demurrers, be continued
18 to a date subsequent to the hearing on BBID's Motion for Leave to Amend.

19 *2. Regarding the Pending SWRCB Demurrers:*

20 The SWRCB demurred to BBID's Operative Complaint on October 2, 2015. The demurrer
21 is currently scheduled for August 12, 2016, with the opposition due on or before August 1, 2016.
22 On June 7, 2016, the State Water Board unanimously dismissed its ACL Complaint against BBID
23 during a public meeting. The State Water Board served and publicly posted its final Order of
24 Dismissal of the ACL Complaint on June 15, 2016 (Exhibit A). Several causes of action in
25 BBID's First Amended Petition for Writ of Mandate/Complaint (Operative Complaint) filed on
26 September 2, 2015 are based on the ACL Complaint when it was still pending against BBID. As
27 such, many portions of BBID's Operative Complaint are moot because the State Water Board's
28 enforcement action is no longer pending against BBID. After a meet and confer process, BBID

1 filed a motion on July 27, 2016, seeking for leave to file a SAC to tailor and conform the
2 pleadings to the facts as they currently exist given the State Water Board's recent Order
3 dismissing the ACL Complaint. BBID's proposed amended pleading also clarifies the remedies
4 sought given the dismissal of the ACL Complaint, as well as clarifies the legal theories pled as
5 "Declaratory Relief/Writ of Mandate" in the Operative Complaint by properly separating the
6 theories into separate and more distinct causes of action. BBID proposes to delete 9 of the
7 Declaratory Relief causes of action pled jointly with Writ of Mandate causes of action in the
8 Operative Complaint, as well as delete the 6th, 8th, 14th, 15th and 16th causes of action in the
9 Operative Complaint rendered moot and/or otherwise unnecessary post-dismissal of the ACL
10 Complaint. Accordingly, BBID requests that this Court continue the State Water Board's
11 Demurrer hearing as to the Operative Complaint to a date following the disposition of this
12 motion.

13 3. *Regarding the Motions for Attorney's Fees and Memorandum of Costs:*

14 BBID reserved a hearing date of November 18, 2016 for the motion for attorneys' fees. A
15 duplicative motion has also been filed in the new Sacramento Superior Court writ case.

16 4. *Regarding the Effect of the SWRCB Ruling in the Enforcement Actions:*

17 The State Water Board Ruling dismissing the enforcement actions is attached as Exhibit
18 A. The hearing officers dismissed the actions due to the failure of the State Water Board
19 Prosecution Team to carry its burden of proof. However, the State Water Board inserted a section
20 in its Order purporting to declare the scope of the State Water Board's jurisdiction over riparian
21 and pre-1914 appropriative rights, and the scope of the Board's enforcement authority through
22 Water Code section 1052. BBID filed a new Writ of Mandate in Sacramento Superior Court to
23 address the section of the order containing these legal conclusions. BBID does not challenge the
24 dismissal of the ACL Complaint.

1 **C. Position of Petitioners The West Side Irrigation District, Banta-Carbona**
2 **Irrigation District, and Paterson Irrigation District, Central Delta Water**
3 **Agency, South Delta Water Agency and Woods Irrigation Company**

4 1. *Regarding the Pending Motions for Intervention:*

5 SJTA, CDWA and SDWA reached agreement on CDWA and SDWA's intervention in the
6 SJTA Case and this Court signed the Order granting intervention.

7 WSID, CDWA, SDWA, WIC and Westlands Water District reached agreement on
8 Westlands' intervention in the WSID et al. case and this Court signed the Order granting
9 intervention.

10 WSID, CDWA, SDWA, WIC and DWR reached agreement on DWR's intervention in the
11 WSID et al. case. DWR is preparing a proposed stipulation and order for circulation.

12 WSID, CDWA, SDWA, WIC and the State Water Contractors have not yet reached
13 agreement on SWC's proposed intervention in the WSID et al. case. If agreement is not reached
14 shortly, WSID, et al. will be opposing the intervention by SWC.

15 2. *Regarding the Pending SWRCB Demurrers:*

16 WSID et al. continue to assert that the demurrers lack merit and will be filing oppositions.
17 Notably, the WSID et al. action was filed before the SWRCB Enforcement actions were initiated.
18 The issues raised in the WSID et al. action remain ripe for adjudication.

19 3. *Regarding the Motions for Attorney's Fees and Memorandum of Costs:*

20 WSID et al. have reserved a hearing date of December 18, 2016 for the motion for
21 attorneys' fees. A duplicative motion has also been filed in the new Sacramento Superior Court
22 writ cases. We are trying to reach agreement with the SWRCB as to where the motion should be
23 heard.

24 4. *Regarding the Effect of the SWRCB Ruling in the Enforcement Actions:*

25 The SWRCB Ruling dismissing the enforcement actions is attached as Exhibit A. The
26 hearing officers dismissed the actions due to the failure of the SWRCB Prosecution Team to carry
27 its burden of proof. However, instead of simply dismissing the action, the SWRCB inserted an
28 entire section of gratuitous legal analysis in the ruling on the issues of (1) the scope of the

1 SWRCB's jurisdiction over riparian and pre-1914 appropriative rights, and (2) the scope of the
2 Board's enforcement authority through Water Code section 1052. WSID, et al., and others, were
3 thus forced to file new Writs of Mandate in Sacramento Superior Court to address these
4 gratuitous and incorrect legal conclusions.

5 **D. Position of Petitioners San Joaquin Tributaries Authority, Oakdale Irrigation**
6 **District, and South San Joaquin Irrigation District.**

7 The San Joaquin Tributaries Authority, Oakdale Irrigation District and South San Joaquin
8 Irrigation District (collectively STJA) support coordination of the instant proceedings with the
9 newly filed challenges to State Water Board Order WR 2016-0015 filed in Sacramento County
10 Superior Court.

11 By letter dated July 22, 2016, BBID indicated that it intends to file a Motion for Leave to
12 File a Second Amended Petition for Writ of Mandate and Complaint. In the same letter, BBID
13 requested that the Court continue the SWRCB's demurrer hearing until after a ruling on the
14 motion for leave to amend. On July 27, 2016, BBID moved for leave to file a second amended
15 petition for writ of mandate and complaint.

16 The SJTA joins in BBID's application to continue the demurrer hearings in light of the
17 recently filed motion for leave to amend, and respectfully requests that the Court continue all of
18 the demurrer hearings until after it has issued a ruling on BBID's motion, so that all of the
19 demurrers may be heard together.

20 The SJTA did not oppose the motion by Central Delta Water Agency and South Delta
21 Water Agency for leave to intervene in the SJTA case, and the Court signed an order granting
22 intervention on or about June 20, 2016.

23 The SJTA will not oppose the separate motions to intervene filed by the Department of
24 Water Resources and the State Water Contractors.

1 **III. Suggestions for Efficient Management**

2 **A. Position of the Respondents and Defendants State Water Board et al.**

3 The State Water Board respectfully submits that the Court needs to address at least three
4 issues before the pleadings in coordinated actions are settled and the parties' claims and responses
5 are at issue and ready for the Court's determination. First, the State Water Board asks that the
6 Court address the five demurrers that are currently set for hearing on August 12, 2016.
7 Resolution of the demurrer issues will assist all parties in determining the nature and scope of
8 claims that are available to the plaintiffs and petitioners in the present coordinated actions against
9 the State Water Board. Second, the Court should consider and rule upon the pending motions to
10 intervene set for hearing on August 12, 2016 to determine the identity of the parties that are
11 before the Court in the present coordinated actions. Third, if the parties cannot reach agreement
12 as to whether the three new actions challenging State Water Board Order 2016-0015 should be
13 treated as add-on cases to the present coordinated actions, then the Court should entertain a State
14 Water Board motion requesting that the new cases be added to the five pending coordinated
15 actions.

16 **B. Position of Petitioner Byron-Bethany Irrigation District**

17 *Regarding the New Writ Actions filed in Sacramento Superior Court:*

18 It is currently premature to coordinate BBID's new writ petition with the existing
19 coordinated cases in Santa Clara County until the final disposition of the pleadings in Santa Clara
20 County. BBID has not yet formally served its new petition and has until on or before September
21 5, 2016 by statute to do so (noting that it is a holiday, and the deadline will fall a day later).
22 Furthermore, there does not appear to be a basis for coordination in Santa Clara if the existing
23 cases do not continue.

1 **C. Position of Petitioners The West Side Irrigation District, Banta-Carbona**
2 **Irrigation District, and Paterson Irrigation District, Central Delta Water**
3 **Agency, South Delta Water Agency, and Woods Irrigation Company**

4 *Regarding the New Writ Actions filed in Sacramento Superior Court:*

5 WSID et al. generally agree that these new writ actions should be coordinated with the
6 existing coordinated cases pending in this Court, provided the existing cases continue (and are not
7 disposed of by the SWRCB demurrer). There does not appear to be a basis for coordination in
8 Santa Clara if the existing cases do not continue.

9 **F. Position of Petitioners San Joaquin Tributaries Authority, Oakdale Irrigation**
10 **District, and South San Joaquin Irrigation District.**

11 The SJTA agrees with the position of WSID et al., that the new writ petitions filed in
12 Sacramento County Superior Court should be coordinated with the existing coordinated cases
13 pending this Court, provided that the existing cases are not disposed of by the SWRCB's
14 demurrers. In the event that the coordinated cases in this Court are disposed of by demurrer, the
15 SJTA agrees that there is no basis for coordination in Santa Clara County Superior Court if the
16 existing coordinated cases are disposed of by demurrer.

1 Respectfully submitted:

2 Dated: July 28, 2016

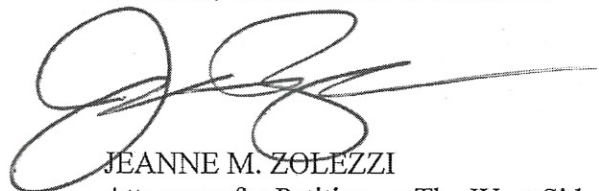
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9 State Water Resources Control Board

10 Dated: July 28, 2016

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13 JEANNE M. ZOLEZZI
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15 Irrigation District, Banta-Carbona Irrigation
16 District, and Patterson Irrigation District

17 Dated: July 28, 2016

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21 Agency

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Respectfully submitted:

Dated: July 28, 2016

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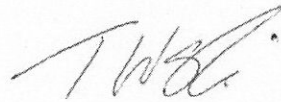
Dated: July 27, 2016

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Dated: July 27, 2016

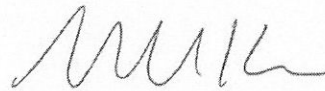
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Dated: July 27, 3016

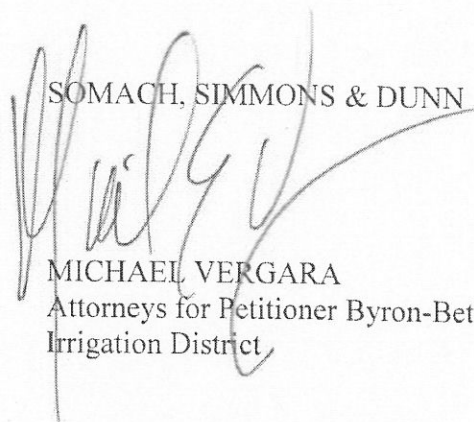
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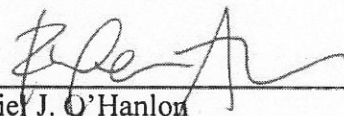
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Dated: July 28, 2016

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GIRARD
A Professional Corporation

By:  for
Daniel J. O'Hanlon
Attorneys for Intervenor
WESTLANDS WATER DISTRICT

CERTIFICATE OF SERVICE

Case Name: **CALIFORNIA**
CURTAILMENT CASES

No. **1-15-CV-285182**

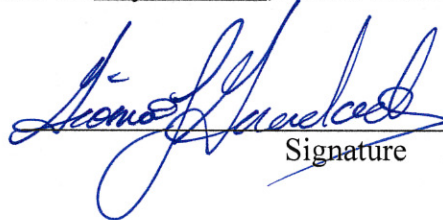
I hereby certify that on July 27, 2016, I electronically filed the following documents with the Clerk of the Court by using the Odyssey eFile CA system:

JOINT CASE MANAGEMENT CONFERENCE STATEMENT

I certify that **all** participants in the case are registered Odyssey eFile CA users and that service will be accomplished by generating automatically.

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on July 27, 2016, at San Francisco, California.

Giomara Guardado
Declarant



Signature

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