

September 23, 2015

Via Electronic Mail

Andrew Tauriainen, Attorney III  
State Water Resources Control Board  
Office of Enforcement  
1001 I Street, 16th Floor  
Sacramento, CA 95814

Re: BBID ACLC Proposed Stipulation

Dear Mr. Tauriainen:

This letter responds to your September 17, 2015 email regarding the Hearing Officer's requirement that the Byron-Bethany Irrigation District (BBID) and the Prosecution Team meet and confer in advance of the pre-hearing conference regarding the stipulation with respect to specifically enumerated factual issues. While we have now had the opportunity to review the Prosecution Team's proposed Draft Stipulation, BBID is unable to enter into any stipulation at this time.

As you know, in adjudicative proceedings, particularly as significant and fact intensive as Enforcement Proceeding ENF01951 (ENF10951), parties typically discuss stipulations of fact after having had the opportunity to investigate allegations, conduct discovery, and have had an opportunity to confirm facts presented for stipulation. ENF01951 is on expedited schedule. BBID has expressed concern about the limited amount of time between issuance of the Notice of Public Hearing and the date set for commencement of the evidentiary hearing in ENF01951. The Hearing Officer's September 11, 2015 letter, which I did not have time to review until Monday, September 14, provided only one week to agree to a factual stipulation.

BBID has been focusing its efforts on the threshold issue of the availability of water at BBID's point of diversion for the period of June 13 through June 25, 2015, and the significant briefing and legal work associated with the *California Water Curtailment Cases*, Santa Clara Superior Court No. 1-15-CV-285182. Thus, BBID has not had the opportunity to adequately investigate and research the specific categories of facts enumerated in the Hearing Officer's September 11, 2015 letter, and therefore, at this time is unwilling to stipulate to the matters contained in your draft stipulation.

Regarding your Draft Stipulation, I can say generally that BBID is not aware of any gauge called the "Byron Bethany Irrigation District Diversion" Station ID BBI. BBID also believes the diversion figures that the State Water Resources Control Board

(SWRCB) obtained from the California Data Exchange Center (CDEC), contained in Paragraph I of your Draft Stipulation, are incorrect. BBID has not had time to investigate the cause of the apparent error at CDEC, but BBID disputes those figures. Regarding water rights, BBID will not stipulate that it does not possess riparian rights or that it does not possess any other pre-1914 rights outside of Statement 021256. BBID is in the process of investigating these issues, and will not stipulate to the non-existence of water rights.

Your Draft Stipulation also seeks a stipulation that all of BBID's diversions, between June 13 and June 25, 2015, were under BBID's pre-1914 appropriative water right. BBID will not so stipulate. If, in fact, there was sufficient water available for BBID to divert under its pre-1914 appropriative water right from June 13 through June 25, 2015, then it may be that all water diverted by BBID was diverted under that right. If BBID needs to rely on another basis of right, it may assert those rights. As you know, BBID did purchase water on the transfer market in 2015. BBID is not going to forego reliance on any basis of right for the diversion of water between June 13 and June 25, 2015.

BBID's contract with the United States Bureau of Reclamation, Contract No. 14-06-200-785-LTR1, includes Central Valley Project (CVP) water for both "Irrigation" water and for "Municipal and Industrial" water. BBID has received "Municipal and Industrial" water under its contract in 2014 and 2015, and will continue to receive water for the remainder of 2015. Therefore, BBID will not stipulate that it has received "zero water supply" under this contract.

The Hearing Officer's September 11, 2015 letter also directs the parties to consider a stipulation regarding whether BBID diverted water from June 13 through June 25, 2015 for "health and safety needs or for critical power generation." The Draft Stipulation contains a placeholder for a stipulation of facts regarding this issue. BBID is not prepared to stipulate to whether water diverted between June 13 and June 25 was for "health and safety needs or for critical power generation." As a preliminary matter, these terms are undefined and BBID does not know what they mean in the context of ENF01951. Moreover, and as BBID has explained previously, to the extent water was available to divert under BBID's pre-1914 appropriative rights or any other basis of right, I do not know that classifying water as necessary for "health and safety" or critical power generation" is necessary.

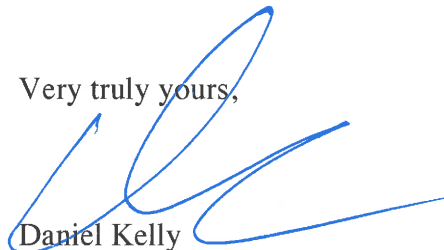
Furthermore, and as you likely know, prior to June 12, 2015, representatives of BBID met with Tom Howard, Kathy Mrowka, and John O'Hagan to discuss the provision of water to the community of Mountain House, the Mariposa Energy Project, and the Contra Costa Airport, as well as providing water to Cal Fire as needed for firefighting efforts in the Altamont region in light of impending curtailments. BBID explained to Mr. Howard that it was physically unable to restrict raw water deliveries to

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the community of Mountain House without jeopardizing the community-wide fire protection and suppression system in Mountain House. Mr. Howard told BBID that the SWRCB fully expected BBID to continue providing water sufficient to prevent such a catastrophic result to Mountain House, and that the SWRCB would, as it has since done, issue a Compliance Order against Mountain House Community Services District.

Factual circumstances this complicated do not lend themselves to a being resolved in short time frames, and certainly not in time for the pre-hearing conference this Friday. In the event the Hearing Officer provides the parties additional time to prepare for the Public Hearing, BBID will, at the appropriate time, attempt to arrive at a stipulation of facts.

Very truly yours,



Daniel Kelly  
General Counsel  
Byron-Bethany Irrigation District

DK:yd

cc: Senator Cathleen Galgiani, Senate District 05  
(Via electronic mail: [senator.galgiani@senate.ca.gov](mailto:senator.galgiani@senate.ca.gov); [marian.norris@sen.ca.gov](mailto:marian.norris@sen.ca.gov))

Assemblywoman Dr. Susan Talamantes Eggman, District 13  
(Via electronic mail: [info@susaneggman.com](mailto:info@susaneggman.com))