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PUBLIC HEARING
STATE OF CALIFORNIA
NATURAL RESOURCES AGENCY
DEPARTMENT OF WATER RESOURCES

In the Matter of:)
)
Proposed adoption of new)
regulations regarding)
Encroachment Permits in)
accordance with Water Code)
section 12899)
-----)

BONDERSON BUILDING
FIRST FLOOR HEARING ROOM, ROOM 102-B
901 P STREET
SACRAMENTO, CALIFORNIA

MONDAY, DECEMBER 9, 2013
9:09 A.M.

JAMES F. PETERS, CSR, RPR
CERTIFIED SHORTHAND REPORTER
LICENSE NUMBER 10063

A P P E A R A N C E S

HEARING OFFICER:

Mr. James K. Openshaw, Senior Attorney

STAFF:

Mr. Leroy Ellinghouse

Mr. Scott Williams

ALSO PRESENT:

Ms. Anita Taff-Rice, TW Telecom

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Opening remarks by Hearing Officer Openshaw
Ms. Taff-Rice
Closing remarks by Hearing Officer Openshaw
Adjournment
Reporter's Certificate

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P R O C E E D I N G S

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2 HEARING OFFICER OPENSHAW: Good morning. We're
3 here on the Department of Water Resources encroachment
4 permit regulations. This is Monday, December 9th. This
5 is pursuant to a Water Code Section 12899, which allows
6 the Department to create regulations that allow the
7 department to control access to the State Water Project
8 right of way. The Notice of Proposed Rule-Making was
9 published on October 25th, 2013 and this is our public
10 hearing.

11 We welcome everybody and we welcome the comments.
12 We will be responding to those comments, and those will be
13 published in our Final Statement of Reasons. For those of
14 you who are here to comment, if you would make your
15 comments fairly specific with regard to sections that you
16 might be concerned about, it would be helpful for us to
17 respond. And we do have a court reporter here, so if you
18 would keep that in mind and speak clearly, it will make
19 the court reporter's job a whole lot easier.

20 So let's get going. We have one person Anita
21 Taff-Rice.

22 MS. TAFF-RICE: Yes.

23 HEARING OFFICER OPENSHAW: How are you?

24 MS. TAFF-RICE: Good. Thank you.

25 HEARING OFFICER OPENSHAW: How can we help you?

1 MS. TAFF-RICE: Well, I represent TW Telecom,
2 which is a regulated telecommunications carrier. We have
3 a certificate to operate from the California Public
4 Utilities Commission. And our interest in the proceeding
5 is that TW Telecom a number of years ago purchased the
6 assets of a company called GST Telecommunications, Inc.
7 And it is possible -- although, we're still doing the
8 research, it's possible that that company may have had
9 some facilities in Department of Water Resources right of
10 way. So that's how we think we are potentially affected
11 by this.

12 And really our concerns I guess are two-fold.
13 One is that if it were to be the case that GST or any
14 other portion of TW Telecom has facilities in the right of
15 way today, if it turned out that those were not permitted
16 by the Department, you know, we'd just like the
17 opportunity to work with the agency to make sure that, if
18 possible, they can be left in place. You know, I
19 understand it can't potentially -- cause any potential
20 threat. If, for some reason, they needed to be relocated,
21 we'd certainly work with the Department to do that, but we
22 just would want to make sure we got notice that there was
23 a potential problem, and have a sufficient amount of time
24 to be able to move those resources.

25 To the best of my knowledge, all of the

1 facilities that we do have deployed are currently in use
2 and providing telecommunication services to customers. So
3 we do have certain obligations because of the Public
4 Utilities Commission to not discontinue service without
5 proper and formal notice to the Commission. So one thing
6 we're asking for would be a sufficient amount of time to
7 make whatever remedy is needed.

8 And then I guess the second issue that would be
9 of most interest to us is the section on environmental
10 review. And I believe that is section -- let's see,
11 subsection C is the one that we're particularly interested
12 in. And this really has to do with the nexus between the
13 Public Utilities Commission jurisdiction and the
14 Department of Water Resources jurisdiction over
15 environmental review.

16 As I understand it, the Public Utilities
17 Commission has stated that they believe they were
18 designated as the lead agency for all utility
19 construction. And that was done pursuant to an Executive
20 Order that was issued at about the same time that CEQA was
21 passed, so that would have been 1970. And since that
22 time, they have, in fact, taken jurisdiction and done
23 environmental review for all types of utilities so that
24 would be gas, water, electric and telecommunications.

25 So if there were some need to relocate facilities

1 and a CEQA review was required, we would want to get some
2 clarification from the Department of Water Resources as to
3 whether or not the prior review by the Commission would be
4 sufficient.

5 In particular, TW Telecom got it's certificate of
6 public convenience and necessity quite a few years ago.
7 And at that time, the approach that the Public Utilities
8 Commission took was to do a -- something akin to a master
9 EIR. They did a programmatic review of the types of
10 construction that a telecom facility -- sorry, a telecom
11 carrier might be expected to engage in. And on that
12 basis, they issued a certificate to operate which also had
13 a Mitigated Neg Dec associated with it. And this
14 Mitigated Negative Declaration proposes mitigation
15 measures that would bring any potential environmental
16 effect to something less than substantial.

17 And it's pretty comprehensive. It covers air
18 quality, you know, noise, pollution, dust control,
19 archaeological, biological, et cetera. So TW Telecom does
20 operate pursuant to that Mitigated Negative Declaration.
21 So I think it would be our position that if in fact a
22 facility had to be relocated, it would fall subject to the
23 Public Utility Commission's jurisdiction, and specifically
24 would be built out pursuant to that Mitigated Negative
25 Declaration.

1 So I guess the only other thing that we did have
2 some question about was the portion of the regulation that
3 specifies the depths that facilities need to be deployed.
4 What it says now is that it would be three feet below the
5 road surface. And most typically -- we only have fiber
6 optic facilities. More typically, fiber optic facilities
7 will be installed 18 to 24 inches below the ground surface
8 or the road surface.

9 So we've asked in our proposed revisions that
10 that be revised to two feet rather than three, because we
11 do think that provides us an adequate margin of safety,
12 you know, both for TW Telecom as well as for the
13 Department, because obviously you don't want to run into a
14 problem with buried facilities either. So that is a
15 little bit atypical.

16 And then, you know, the other comments are really
17 just, you know, some clarifications or recommendations
18 that based on TW Telecom's experience here in California.
19 So we just respectfully ask that the Department take
20 consideration of those comments, and, of course, if you
21 had any questions or wanted to have a dialogue, we'd be
22 more than happy to make someone available to do that.

23 HEARING OFFICER OPENSHAW: Certainly.

24 Thank you. Now, the comments that you're
25 referring to, those were submitted in writing, correct?

1 MS. TAFF-RICE: Yes, they were, via a letter that
2 was filed on Friday.

3 HEARING OFFICER OPENSHAW: Okay. We have that.

4 MS. TAFF-RICE: Yes, directed to Mr. Ellinghouse.

5 MR. ELLINGHOUSE: No comments from the back?

6 HEARING OFFICER OPENSHAW: Is Mr. Diamond -- are
7 you associated with him?

8 MS. TAFF-RICE: Yes, Mr. Diamond is my client.

9 HEARING OFFICER OPENSHAW: Okay. Good. All
10 right. So we received written commentary from him.

11 HEARING OFFICER OPENSHAW: Any comments?

12 MR. ELLINGHOUSE: I have no comments at this
13 point.

14 HEARING OFFICER OPENSHAW: We will consider the
15 comments certainly. I think they -- the Department's
16 response on the points that you've raised, you'll see that
17 we'll be able to work with your company with the industry
18 on those things. A lot of that we have already accounted
19 for in the regulations, so we'll comment in that manner so
20 that we know what we're -- what we were thinking and what
21 the regulations say.

22 MS. TAFF-RICE: I've got a question.

23 HEARING OFFICER OPENSHAW: Sure.

24 MS. TAFF-RICE: Can you give me an idea of the
25 time frame from this point forward how long you think it

1 will be for the comments to be published, and then how
2 long it might be until the regulations are actually
3 adopted?

4 HEARING OFFICER OPENSHAW: This schedule right
5 now is that we are required to go through the California
6 Water Commission prior to submission of the final
7 regulations, and the Final Statement of Reasons to the
8 Office of Administrative Law. And we're planning -- they
9 do not have a December meeting, but they have a January
10 meeting. So we're planning on completing the comments and
11 whatever other cleanup we think is necessary and submit
12 the Final Statement of Reasons, and the final version of
13 the regulations to the Water Commission in January.

14 And once we receive their okay, then it all goes
15 over to the Office of Administrative Law. So it would
16 be -- I think their meeting is usually sometime the third
17 week of January.

18 MR. ELLINGHOUSE: And then they have up to a
19 year.

20 HEARING OFFICER OPENSHAW: Right. And once
21 they're submitted to the Office of Administrative Law,
22 then I believe the process is that the Office of
23 Administrative Law has 30 days for an initial review, but
24 there is up to one year from the submission of the Final
25 Statement of Reasons for the regulations to become

1 effective. And we're hoping to do it way before one year.

2 Any other questions?

3 MS. TAFF-RICE: No, thank you.

4 HEARING OFFICER OPENSHAW: Well, thanks very much
5 for coming.

6 MR. ELLINGHOUSE: Thanks for showing

7 HEARING OFFICER OPENSHAW: We appreciate your
8 interest.

9 And I will just -- since we are on the record, I
10 will note, and this is kind of for the Office of
11 Administrative Law's information. We sent out notices --
12 not only did we do the internet and the Notice Register,
13 but we sent mailing notices to probably over 300
14 individuals, businesses, industries that we thought may be
15 interested in this regulation. And so far, we've had one
16 comment. So that will certainly speed up the process of
17 responding to comments and getting this back to the Office
18 of Administrative Law.

19 MR. ELLINGHOUSE: And it might be good to note
20 that we utilized Underground Service Alert for north and
21 south in order to build our mailing list. So the idea was
22 to try to get as many utility companies as possible the
23 notice.

24 HEARING OFFICER OPENSHAW: So let's just go on a
25 break now and recess until somebody else appears.

1 (Off record: 9:22 AM)

2 (Thereupon a recess was taken.)

3 (On record: 9:26 AM)

4 HEARING OFFICER OPENSHAW: All right. Let's go
5 back on the record. And we have another commentator here.
6 Sorry, I don't have -- I can't pronounce your last name.
7 Mark?

8 MR. KREUSSE: Kreusse. I'm sorry about the
9 handwriting. And I'm actually not here to comment, just
10 to listen.

11 HEARING OFFICER OPENSHAW: Oh, you're not here to
12 comment. Okay.

13 MR. KREUSSE: Oh, I'm sorry. I signed the list
14 for comment, and I just --

15 HEARING OFFICER OPENSHAW: That's fine.
16 Off the record.

17 (Off record: 9:26 AM)

18 (On record: 1:00 PM)

19 HEARING OFFICER OPENSHAW: Back on the record.
20 This concludes our Department of Water Resources hearing
21 on the encroachment permit regulations pursuant to Water
22 Code Section 12899. It's 1:00 o'clock. The hearing was
23 supposed to go through 1:00 p.m. And it's now 1:00
24 o'clock, so we're concluding the hearing. No further
25 comments have been submitted throughout the duration of

1 the hearing for the past four hours. And we're finished,
2 so the record is closed.

3 (Thereupon the California Department of
4 Water Resources public hearing adjourned
5 at 1:01 PM)

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C E R T I F I C A T E O F R E P O R T E R

I, JAMES F. PETERS, a Certified Shorthand Reporter of the State of California, and Registered Professional Reporter, do hereby certify:

That I am a disinterested person herein; that the foregoing California Department of Water Resources public hearing was reported in shorthand by me, James F. Peters, a Certified Shorthand Reporter of the State of California, and thereafter transcribed under my direction, by computer-assisted transcription.

I further certify that I am not of counsel or attorney for any of the parties to said hearing nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 17th day of December, 2013.

JAMES F. PETERS, CSR, RPR
Certified Shorthand Reporter
License No. 10063