



**Terry Tamminen**  
*Secretary for  
Environmental  
Protection*

# State Water Resources Control Board

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## Division of Water Rights

1001 I Street, 14<sup>th</sup> Floor ♦ Sacramento, California 95814 ♦ 916.341.5387  
Mailing Address: P.O. Box 2000 ♦ Sacramento, California 95812-2000  
FAX: 916.341.5400 ♦ www.waterrights.ca.gov



**Arnold Schwarzenegger**  
*Governor*

## NOTICE OF PUBLIC HEARING

**The State Water Resources Control Board will hold a hearing  
to determine whether to adopt proposed cease and desist orders  
against**

**Mendocino County Russian River Flood Control and  
Water Conservation Improvement District**

**and**

**Redwood Valley Water District**

**East Fork Russian River – Mendocino County**

**Commencing at 10:00 a.m. on February 9, 2005 and continuing,  
if necessary, on February 10, 2005**

**at**

**Joe Serna, Jr./Cal-EPA Building  
1001 I Street, Second Floor Byron Sher Hearing Room  
Sacramento, CA**

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### SUBJECT OF HEARING

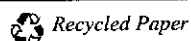
The purpose of this hearing is for the State Water Resources Control Board (SWRCB) to receive evidence relevant to determining whether to adopt Cease and Desist Order No. 262.31-12 and Order No. 262.31-11 against Mendocino County Russian River Flood Control and Water Conservation Improvement District (Mendocino) and Redwood Valley Water District (Redwood), respectively, with the statements of facts and information set forth in the draft orders.

### BACKGROUND

Water Code section 1831, subdivision (a), provides that when the SWRCB determines that any person is violating, or threatening to violate, any requirement described in subdivision (d) of section 1831, the Board may issue an order to that person to cease and desist from that violation. The SWRCB may issue a cease and desist order only after notice and an opportunity for hearing. Such notice shall be by personal notice or by certified mail, and shall inform the person allegedly engaged in the violation (respondent) that he or she may request a hearing within 20 days after the date of receiving the notice. The notice shall contain a statement of facts and information

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*California Environmental Protection Agency*



showing the violation. Unless the SWRCB receives a timely written request for a hearing, the SWRCB may adopt a cease and desist order without a hearing. In the case of each of the proposed cease and desist orders to be considered in this hearing, the respondent requested a hearing.

### **Mendocino County Russian River Flood Control and Water Conservation Improvement District**

The proposed cease and desist order against Mendocino alleges that Mendocino is violating or threatening to violate certain terms and conditions of Permit 12947B, SWRCB Decision 1030, and Order WR 74-30, and is contributing to actual or threatened unauthorized diversions of water. Under Water Code section 1831, subdivision (d), the SWRCB may issue a cease and desist order in response to a violation or threatened violation of (1) the prohibition in Water Code section 1052 against the unauthorized diversion or use of water, or (2) permit terms and conditions, or (3) an SWRCB decision or order.

Permit 12947 was one of five permits issued to Mendocino and to Sonoma County Water Agency for the Russian River Project approved in SWRCB Decision 1030. The permits authorize storage of water in Lake Mendocino behind Coyote Valley Dam. Subsequently, in Order 74-30, the SWRCB revoked Permit 12948 and divided Permit 12947 into Permit 12947A, held by Sonoma County Water Agency, and Permit 12947B, held by Mendocino.

Permit 12947B authorizes the diversion of water from the East Fork Russian River from January 1 to December 31 of each year not to exceed: (1) 53 cubic-feet per second by direct diversion, and (2) 122,500 acre-feet per annum by storage. The combined direct diversion and re-diversion of stored water under Permit 12947B shall not exceed 8,000 acre-feet per annum. The authorized purpose of use under Permit 12947B includes municipal, industrial, domestic, irrigation, and recreational uses.

Mendocino's Permit 12947B requires it to submit to the SWRCB the location of each point of diversion or rediversion of stored water and a statement of the quantity of water to be diverted at each point. The permit also requires progress reports to be submitted promptly by the permittee when requested by the SWRCB until the license is issued.

On October 26, 2004, the Chief of the Division of Water Rights (Division) issued draft Cease and Desist Order No. 262.31-12 regarding alleged violation of Permit 12947B. The draft cease and desist order contains in substance the following allegations:

There are discrepancies in Mendocino's accounting of its points of diversion and rediversion of water and in the amount of water used under Mendocino's rights. Although Mendocino claims that the full 8,000 acre-feet available to it is being used in its service area, Division staff disagree with Mendocino's accounting for the 8,000 acre-feet authorized under Permit 12974B. Mendocino has not submitted the revised information requested by Division staff.

As part of its 2001 Compliance and Enforcement Program, staff found a number of permittees and licensees to have diverted water in excess of their permitted or licensed amounts and seasons in addition to being outside of their authorized place of use. Many of these users claimed to be diverting water under Mendocino's Permit 12947B.

The proposed cease and desist order would find that Mendocino has failed to properly account for water used under its permit, and would additionally find that the absence of proper accounting for the water contributes to actual or threatened unauthorized diversions due to the uncertainty of the availability of water for users who need to claim use under Mendocino's permit.

By letter dated November 10, 2004, Mendocino requested a hearing and submitted comments and proposals regarding the cease and desist order.

### **Redwood Valley County Water District**

The proposed cease and desist order against Redwood alleges that Redwood is violating or threatening to violate certain terms and conditions of Permit 17593 and is violating or threatening to violate the prohibition in Water Code section 1052 against the unauthorized diversion or use of water.

The SWRCB issued Permit 17593 (A024955) to Redwood Valley County Water District in 1979. Permit 17593 authorizes the diversion of water from the East Fork Russian River by direct diversion of: (1) 1.9 cubic feet per second (cfs) from November 1 to April 30 of each year for domestic purposes; (2) 26.6 cfs from March 1 to April 30 of each year for frost protection purposes; and (3) diversion to offstream storage of 2800 acre-feet per annum, to be collected from November 1 to April 30 of each year for irrigation, frost protection, and domestic purposes. The total amount of water taken for all uses shall not exceed 4900 acre-feet from October 1 of each year to September 30 of the subsequent year.

Redwood's permit requires that construction be completed on or before December 1, 1982. The permit authorizes Redwood to make diversions only during times when the water level in Lake Mendocino cannot be increased due to requirements to preserve space in Lake Mendocino for flood control. The permit goes on to state that Redwood may not divert water when the surface level of the water in Lake Mendocino is above the conservation pool during the period from October 1 through April 30.

In Decision 1610, issued in 1986, the SWRCB approved a petition to add Redwood Valley Water District to the place of use of Permit 12947A, held by Sonoma County Water Agency. The petition was approved subject to a number of conditions, including conditions prohibiting or limiting diversions to Redwood when critical or dry conditions occur on the Eel River as determined by inflow to Lake Pillsbury and when storage levels in Lake Mendocino fall below certain levels.

Lastly, in Order 79-15, the SWRCB approved the addition of Redwood Valley County Water District to the place of use authorized under Permit 12947B, held by Mendocino, providing an interim supply of water to Redwood until the 8,000 acre-feet allocation to Mendocino under that permit is fully used. Mendocino did not add Redwood to its district boundaries.

On October 26, 2004, the Division Chief issued Cease and Desist Order No. 262.31-11 pursuant to Permit 17593. The draft cease and desist order contains in substance the following allegations:

Redwood has not constructed the storage reservoir authorized under Permit 17593, nor has it contracted to store water in existing local reservoirs. The draft cease and desist order also alleges that Redwood has served water to areas outside the authorized place of use through annexation of land and that Redwood may be making unauthorized diversions of water for irrigation by directly diverting water in the months of November and April during dry years. The draft cease and desist order alleges that Redwood diverted water in violation of Permit Terms 16 and 17-A-1 of its permit by diverting water when the elevation of water in Lake Mendocino was below the conservation pool a total of 91 days from November 1 to April 30 during the 1999-2000 and 2000-2001 water years. Redwood also diverted water for domestic and irrigation use outside of its permitted season.

By letter dated October 28, 2004, through their attorney, Redwood submitted a request for a hearing.

### **KEY ISSUES**

- 1.)
  - a. **Should the SWRCB adopt a Cease and Desist Order - with the statements of facts, information, and corrective actions set forth in the draft Order against Mendocino County Russian River Flood Control and Water Conservation Improvement District?**
  - b. **Should the SWRCB adopt a Cease and Desist Order - with modifications to the statements of facts, information and corrective actions set forth in the draft Order against Mendocino County Russian River Flood Control and Water Conservation Improvement District?**

2.)

- a. **Should the SWRCB adopt a Cease and Desist Order - with the statements of facts, information, and corrective actions set forth in the draft Order against Redwood Valley County Water District?**
- b. **Should the SWRCB adopt a Cease and Desist Order - with modifications to the statements of facts, information, and corrective actions set forth in the draft Order against Redwood Valley County Water District?**

### **ABOUT THIS HEARING**

In this hearing, there will be a staff enforcement team who will be a party in the hearing. The enforcement team members will be Aaron Miller, John O'Hagan (engineers), and Samantha Olson (attorney). The enforcement team is separated by an ethical wall from the hearing team, and is prohibited from having *ex parte* communications with members of the hearing team regarding substantive issues and controversial procedural issues within the scope of this proceeding. The hearing team consists of the Board members and the staff assisting the Board members with the hearing.

SWRCB Members Richard Katz and Pete Silva will preside as hearing officers over this proceeding. Other Board members may be present during the hearing. SWRCB staff hearing team members will include Barbara Leidigh, Staff Counsel IV, and Ruben Mora, Water Resources Control Engineer. The hearing staff will assist the hearing officer and the other members of the SWRCB during the hearing.

### **HEARING PARTICIPATION**

IF YOU WANT TO TAKE PART IN THIS HEARING, you should carefully read the enclosure entitled "Information Concerning Appearance at Water Right Hearings." As stated in that enclosure, parties intending to present evidence at the hearing must submit a **Notice of Intent to Appear**, which must be **received** by the SWRCB no later than **noon on Thursday, December 30, 2004**.

To facilitate exchange of testimony, exhibits and witness qualifications, on or about **Tuesday, January 4, 2004**, the SWRCB will mail out a list of those parties who have indicated an intent to participate in the hearing.

Copies of witnesses' proposed testimony, exhibits, list of exhibits, and qualifications must be **received** by the SWRCB and served on each of the parties who have indicated their intent to appear, no later than **noon on Thursday, January 13, 2005**.

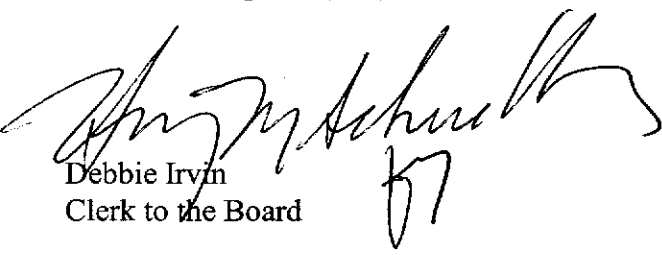
**PARKING, ACCESSIBILITY, AND SECURITY**

The enclosed maps show the location of the Joe Serna Jr./Cal/EPA Building and public parking sites in Sacramento. The Joe Serna Jr./Cal/EPA Building Byron Sher Hearing Room is accessible to persons with disabilities.

Due to enhanced security precautions at the Cal/EPA Headquarters Building, all visitors are required to register with security prior to attending any meeting. To sign in and receive a visitor's badge, visitors must go to the Visitor and Environmental Services Center, located just inside and to the left of the building's public entrance. Depending on their destination and the building's security level, visitors may be asked to show valid picture identification. Valid picture identification can take the form of a current drivers license, military identification card, or state or federal identification card. Depending on the size and number of meetings scheduled on any given day, the security check-in could take from three to fifteen minutes. Please allow adequate time to sign in before being directed to your meeting.

**IF YOU HAVE ANY QUESTIONS**

During the pendency of this proceeding and commencing no later than the issuance of this notice, there will be no *ex parte* communications between SWRCB members or SWRCB hearing team staff and any of the participants regarding substantive or controversial procedural matters within the scope of the proceeding. (Gov. Code, §§ 11430.10-11430.80.) Questions regarding non-controversial procedural matters (Gov. Code, § 11430.20, subd. (b)) should be directed to Barbara Leidigh, at (916) 341-5190.



Debbie Irvin  
Clerk to the Board

Date: **DEC 17 2004**

Enclosures

**Hearing Participants**

Redwood Valley County Water District  
c/o Mr. Don Butow, President  
P.O. Box 399  
Redwood Valley, CA 95470

Redwood Valley Water District  
c/o Paul R. Minasian  
P.O. Box 1679  
Oroville, CA 95965-1679

Mendocino County Russian River Flood Control and  
Water Conservation Improvement District  
Barbara Spazek, Executive Director  
151 Laws Avenue, Suite D  
Ukiah, CA 95482

Mendocino County Russian River Flood Control and  
Water Conservation Improvement District  
c/o Marc J. Del Piero  
4062 El Bosque Drive  
Pebble Beach, CA 93953

Division of Water Rights Enforcement Team  
Samantha Olson  
Office of Chief Counsel  
State Water Resources Control Board  
1001 I Street, 22nd Floor  
P. O. Box 100  
Sacramento, CA 95812

SWRCB Hearing Officers and Staff Hearing Team  
Barbara Leidigh  
Office of Chief Counsel  
State Water Resources Control Board  
1001 I Street, 22nd Floor  
P. O. Box 100  
Sacramento, CA 95812

**Mandatory Hearings Mailing List**

California Farm Bureau Federation  
 c/o William Du Bois  
 11th & L Building, Room 626  
 Sacramento, CA 95814

Nino J. Mascolo  
 Southern California Edison Company  
 2244 Walnut Grove Avenue  
 Rosemead, CA 91770

U.S. Fish & Wildlife Service  
 Ecological Division  
 2800 Cottage Way, Room E1803  
 Sacramento, CA 95825

Stetson Engineering  
 c/o Ali Shahrwody  
 2171 E. Francisco Blvd., Suite K  
 San Rafael, CA 94901

U.S. Bureau of Reclamation  
 c/o John Renning MP-440  
 2800 Cottage Way  
 Sacramento, CA 95825

Bartkiewicz, Kronick & Shanahan  
 c/o Alan B. Lilly  
 1011 Twenty-Second Street  
 Sacramento, CA 95816-4907

Calif. Fisheries Restoration Foundation  
 c/o Martin Seldon  
 1146 Pulora Court  
 Sunnyvale, CA 94087-2331

City Attorney's Office – PUC Team  
 City and County of San Francisco  
 1390 Market Street, Suite 418  
 San Francisco, CA 94102

U.S. Fish & Wildlife Service  
 Ventura Fish & Wildlife Office  
 2493 Portola Road, Suite B  
 Ventura, CA 93003

Ms. Nancee Murray, Senior Staff Counsel  
 California Department of Fish & Game  
 Office of General Counsel  
 1416 9th Street, 12<sup>th</sup> Floor  
 Sacramento, CA 95814

Mr. Larry Week, Chief  
 Native Anadromous Fish and Watershed Branch  
 California Department of Fish & Game  
 1416 9th Street, 12<sup>th</sup> Floor  
 Sacramento, CA 95814

Terry Tamminen  
 Secretary for Environmental Protection  
 California Environmental  
 Protection Agency  
 1001 I Street, 25<sup>th</sup> Floor  
 Sacramento, CA 95814

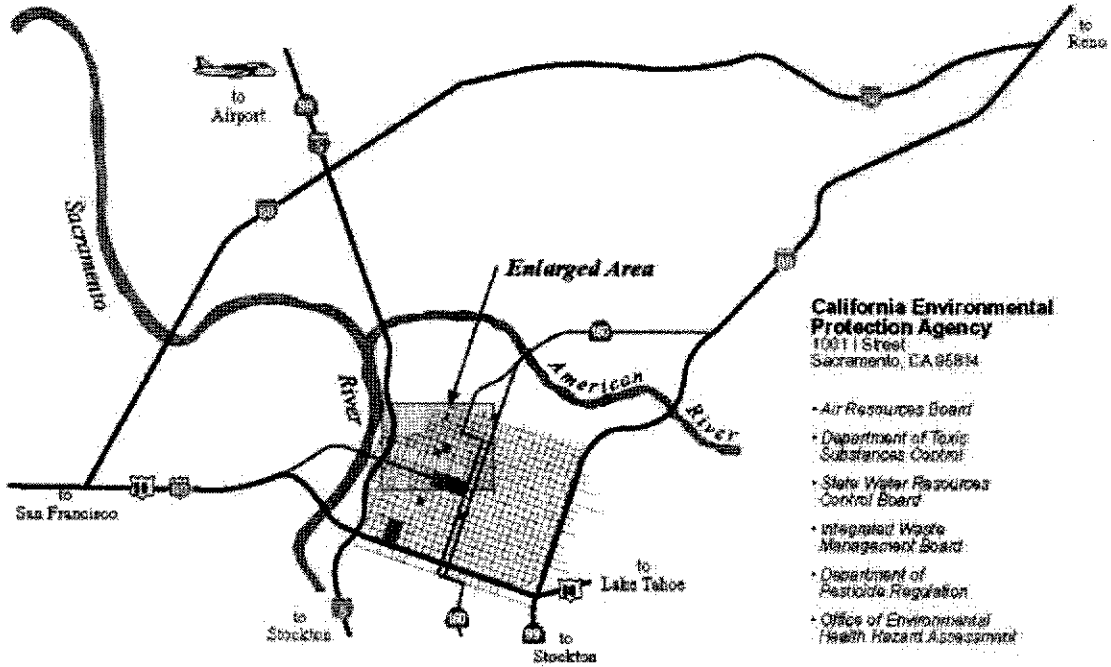
Los Angeles Department of Water & Power  
 c/o Mr. David R. Pettijohn  
 Water Resources Business Unit  
 111 North Hope Street, Rm 1460  
 Los Angeles, CA 90012

Whitnie Henderson  
 Association of California Water Agencies  
 910 K Street, Suite 100  
 Sacramento, CA 95814-3577

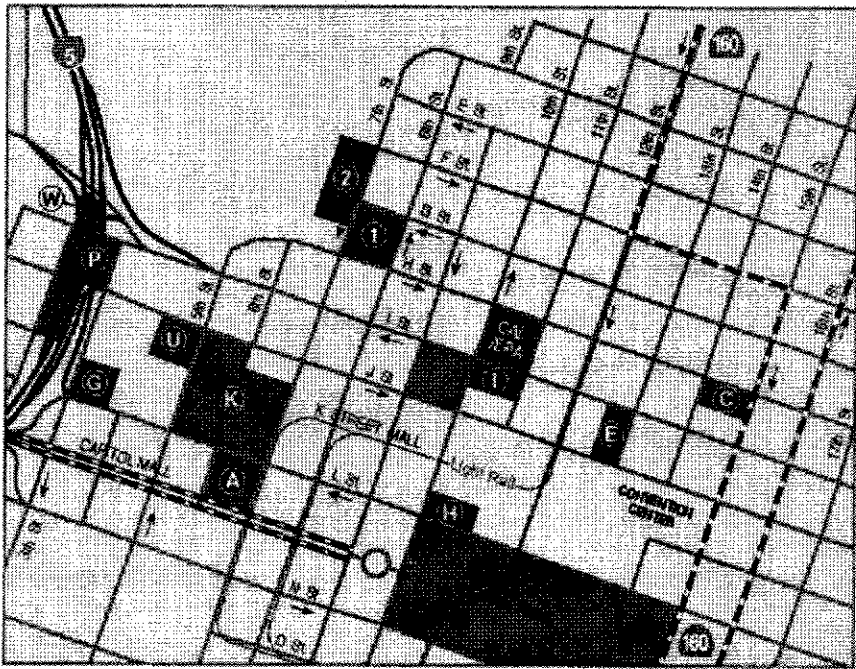
Regional Water Quality Control Board  
 North Coast Region  
 5550 Skylane Blvd, Suite A  
 Santa Rosa, CA 95403



# Enclosure 1



## Parking Lot Locations



- Parking Lot Locations**
- Lot 1 (7th & G St.)
  - Lot 2 (7th & G St.)
  - Lot A (7th & Capitol)
  - Lot C (34th & H St.)
  - Lot G (1st & I)
  - Lot H (11th & I)
  - Lot I (19th & I, 11th & I)
  - Lot K (6th & J, 7th & J)
  - Lot P (2nd & I)
  - Lot U (5th & J)
  - Lot W (2nd & I St.)

## INFORMATION CONCERNING APPEARANCE AT WATER RIGHT HEARINGS

The following procedural requirements will apply and will be strictly enforced for purposes of the above-mentioned hearing.

1. **HEARING PROCEDURES GENERALLY:** The hearing will be conducted in accordance with the procedures for hearings set forth at California Code of Regulations, title 23, sections 648-649.6 and 760, as they currently exist or may be amended. A copy of the current regulations and the underlying statutes governing adjudicative proceedings before the SWRCB is available upon request or may be viewed at the SWRCB's web site: [http://www.waterboards.ca.gov/water\\_laws/index.html](http://www.waterboards.ca.gov/water_laws/index.html)

Each party has the right to call and examine witnesses, introduce exhibits, cross-examine opposing witnesses on any matter relevant to the issues even if that matter was not covered in the direct examination, impeach any witness, rebut adverse evidence, and subpoena, call and examine an adverse party or witness as if under cross-examination. The hearing officer may extend these rights to a non-party participant or may limit the participation of a non-party participant.

Any requests for exceptions to the procedural requirements specified in this notice shall be filed in writing. To provide time for other participants to respond, the hearing officer will rule on procedural requests filed in writing no sooner than fifteen days after receiving the request, unless an earlier ruling is necessary to avoid disrupting the hearing.

2. **PARTIES:** The parties are Mendocino County Russian River Flood Control & Water Conservation Improvement District, Redwood Valley County Water District, the Division of Water Rights' Enforcement Team, and any other persons or entities authorized by the hearing officer to participate in the hearing as parties. Only parties and other participants who are authorized by the hearing officer will be allowed to present evidence. A person or entity that appears and presents only a policy statement will not be allowed to participate in other parts of the hearing. The rules for policy statements are discussed below.
3. **NOTICE OF INTENT TO APPEAR:** Participants in this hearing must file two copies of a Notice of Intent to Appear, which must be **received** by the SWRCB no later than **noon on Thursday, December 30, 2004**. Failure to submit a Notice of Intent to Appear and exhibits in a timely manner may be interpreted by the SWRCB as intent not to appear.

The Notice of Intent to Appear must state: (1) the name and address of the participant, (2) the name of each witness who will testify on the participant's behalf, (3) a brief description of the proposed testimony, and (4) an estimate of the time (not to exceed 20 minutes) that the witness will need to present a brief oral summary of the witness' testimony. The witness' testimony must be submitted in writing as described in Section 4 below. Participants who do not intend to present a case-in-chief but who may wish to cross-examine witnesses or present rebuttal should so indicate on the Notice of Intent to Appear.

examine witnesses or present rebuttal should so indicate on the Notice of Intent to Appear. Participants who decide not to present a case-in-chief after having submitted a Notice of Intent to Appear should notify the SWRCB and the other participants as soon as possible.

In order to expedite the exchange of information and lower the cost of participating in the hearing, the SWRCB encourages participants to submit written policy statements, written opening statements, written testimony, exhibits, and Exhibit Identification Indexes to the SWRCB in electronic form. In addition, participants may exchange the foregoing documents in electronic form. Hearing participants are not required to submit these documents in electronic form or accept electronic service; however, those who choose to submit these documents electronically must comply with the requirements described in section 5, below. If you are willing to accept electronic media service in lieu of receiving hard copies of items, please check the appropriate box on the Notice of Intent to Appear.

The SWRCB will mail a service list of parties to exchange information to each hearing party who has submitted a Notice of Intent to Appear. Hearing participants who intend to make only policy statements are not required to exchange information and will not receive testimony or exhibits from the parties. The service list will indicate which participants agreed to accept electronic service. No later than **noon on Thursday, January 13, 2005**, each participant shall serve a copy of its Notice of Intent to Appear on each of the participants identified on the service list and shall also serve on the SWRCB and the participants on the service list a statement of service that indicates the manner of service. If there is any change in the hearing schedule, only those persons or entities that have filed a Notice of Intent to Appear will be informed of the change.

4. **WRITTEN TESTIMONY AND OTHER EXHIBITS:** Exhibits include written testimony, statements of qualifications of expert witnesses, and other documents to be used as evidence. Each participant proposing to present testimony on factual or other evidentiary matters at the hearing shall submit such testimony in writing.<sup>1</sup> Written testimony shall be designated as an exhibit, and must be submitted with the other exhibits. Oral testimony that goes beyond the scope of the written testimony may be excluded. A participant who proposes to offer expert testimony must submit an exhibit containing a statement of the expert witness's qualifications.

Each participant shall submit to the SWRCB either: five paper copies of each of its exhibits or three paper copies and one electronic copy of each of its exhibits. Each participant shall also serve a copy of each exhibit on every participant on the service list. Participants may serve those parties who agree to electronic service with an electronic copy of exhibits. Participants must serve paper copies of exhibits on those participants who do not agree to electronic service.

With its exhibits, each participant must submit to the SWRCB and serve on the other participants a completed Exhibit Identification Index. If possible, each participant should

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<sup>1</sup> The hearing officer may make an exception to this rule if the witness is adverse to the participant presenting the testimony and is willing to testify only in response to a subpoena or alternative arrangement. In such a case, the hearing officer may allow presentation of the oral direct testimony without requiring written testimony.

submit to the SWRCB and serve on the other participants an electronic copy, as well as a paper copy of the Exhibit Identification Index. Please see Section 5 for details regarding electronic submissions.

A statement of service with manner of service indicated shall be filed with each participant's exhibits. The exhibits and indexes for this hearing, and a statement of service, must be **received** by the SWRCB by **noon on Thursday, January 13, 2005**, and served on the other participants on or before that date.

The following requirements apply to exhibits:

- a. Exhibits based on technical studies or models shall be accompanied by sufficient information to clearly identify and explain the logic, assumptions, development, and operation of the studies or models.
  - b. The hearing officer has discretion to receive in evidence by reference relevant, otherwise admissible, public records of the SWRCB and documents or other evidence that have been prepared and published by a public agency, provided that the original or a copy was in the possession of the SWRCB before the notice of the hearing is issued. (Cal. Code Regs., tit. 23, § 648.3.) A participant offering an exhibit by reference shall advise the other participants and the SWRCB of the titles of the documents, the particular portions, including page and paragraph numbers, on which the participant relies, the nature of the contents, the purpose for which the exhibit will be used when offered in evidence, and the specific file folder or other exact location in the SWRCB's files where the document may be found.
  - c. A participant seeking to enter in evidence as an exhibit a voluminous document or database may so advise the other participants prior to the filing date for exhibits, and may ask them to respond if they wish to have a copy of the exhibit. If a participant waives the opportunity to obtain a copy of the exhibit, the participant sponsoring the exhibit will not be required to provide a copy to the waiving participant. Additionally, such exhibits may be submitted to the SWRCB in electronic form, using a file format readable by Microsoft Office 2000 software.
  - d. Exhibits that rely on unpublished technical documents will be excluded unless the unpublished technical documents are admitted as exhibits.
5. **ELECTRONIC SUBMISSIONS:** Participants are encouraged to submit the following documents to the SWRCB in electronic form: written opening statements, written policy statements, written testimony, exhibits, and Exhibit Identification Indexes. In addition, the foregoing documents may be served electronically on those participants who have agreed to accept electronic service. Paper copies of all other documents must be submitted to the SWRCB and served on the other parties, unless the hearing officer specifies otherwise.

Any documents submitted or served electronically must be in Adobe™ Portable Document Format (PDF), except for Exhibit Identification Indexes, which must be in a version supported by Microsoft Excel 2000 (preferred) or Word 2000. Electronic submittals to the SWRCB of documents less than 5 megabytes in size may be sent via electronic

mail to: [WrHearing@waterboards.ca.gov](mailto:WrHearing@waterboards.ca.gov) with a subject of “**East Fork Russian River**”. Electronic submittals to the SWRCB of documents greater than 5 megabytes in size should be sent by regular mail in PDF format on compact disk (CD™) media. Electronic service on participants shall be in the same format as submittals to the SWRCB, and should be submitted to the other participants by mail on CD.

Participants who agree to electronic service may request that specific documents be provided to them in paper copy. Requests should be made to the participant who submitted the document, not to the SWRCB. Participants who receive such a request shall provide a paper copy of the requested document within five days of the date the request is received. The SWRCB will post a list of all exhibits submitted for the hearing on its website at <http://www.waterrights.ca.gov/hearings>.

6. **ORDER OF PROCEEDING:** The SWRCB members serving as hearing officer will follow the Order of Proceedings specified in California Code of Regulations, title 23, section 648.5. Participants should take note of the following additional information regarding the major hearing events.
  - a. **Policy Statements:** Pursuant to California Code of Regulations, title 23, section 648.1, subdivision (d), the SWRCB will provide an opportunity for presentation of nonevidentiary policy statements or comments by interested persons who are not participating in the hearing. Policy statements will be heard at the start of the hearing, immediately after the hearing officer identifies the parties and other participants. Policy statements are subject to the following provisions in addition to the regulation:
    - i. Policy statements are not subject to the prehearing requirements noted above for testimony or exhibits, except that persons wishing to make policy statements are requested to file a Notice of Intent to Appear, indicating clearly an intent to make only a policy statement.
    - ii. The SWRCB requests that policy statements be provided in writing before they are presented. Please see Section 5, above, for details regarding electronic submittal of policy statements. Oral summaries of the policy statements will be limited to five minutes or such other time as established by the hearing officer.
  - b. **Presentation of Cases-In-Chief:** Each participant may present a case-in-chief addressing the key issues identified in the hearing notice. The case-in-chief will consist of any opening statement provided by the participant, oral testimony, introduction of exhibits, and cross-examination of the participant’s witnesses. The hearing officer may allow redirect examination and recross examination. The hearing officer will decide whether to accept the participant’s exhibits in evidence upon a motion of the participant after the case-in-chief has been completed.
    - i. **Opening Statements:** At the beginning of a case-in-chief, the participant or the participant’s attorney may make an opening statement briefly and concisely stating the objectives of the case-in-chief, the major points that the proposed evidence is intended to establish, and the relationship between the major points and the key issues. Oral opening statements will be limited to 20 minutes per participant. A

participant may submit a written opening statement. Please see section 5, above, for details regarding electronic submittal of written opening statements. Any policy-oriented statements by a participant should be included in the participant's opening statement.

- ii. **Oral Testimony:** All witnesses presenting testimony shall appear at the hearing. Before testifying, witnesses shall swear or affirm that the written and oral testimony they will present is true and correct. Written testimony shall not be read into the record. Written testimony affirmed by the witness is direct testimony. Witnesses will be allowed up to 20 minutes to summarize or emphasize their written testimony on direct examination.<sup>2</sup> Each participant will be allowed up to two hours total to present all of its direct testimony.<sup>3</sup>
- iii. **Cross-Examination:** Cross-examination of a witness will be permitted on the party's written submittals, the witness' oral testimony, and other relevant matters. If a participant presents multiple witnesses, the hearing officer will decide whether the participant's witnesses will be cross-examined as a panel. Cross-examiners initially will be limited to one hour per witness or panel of witnesses. The hearing officer has discretion to allow additional time for cross-examination if there is good cause demonstrated in an offer of proof. Any redirect examination and recross examination permitted by the hearing officer will be limited to the scope of the cross-examination and the redirect examination, respectively. Witnesses may be cross-examined on relevant subjects that are not covered in the direct testimony. (Gov. Code, § 11513, subd. (b).) Ordinarily, only a participant or the participant's representative will be permitted to examine a witness, but the hearing officer may allow a participant to designate a person technically qualified in the subject being considered to examine a witness. SWRCB members and the SWRCB's counsel may ask questions at any time, and the SWRCB members and staff may cross-examine any witness.
- c. **Rebuttal:** After all participants have presented their cases-in-chief and their witnesses have been cross-examined, the hearing officer will allow participants to present rebuttal evidence. Rebuttal evidence is new evidence used to rebut evidence presented in another participant's case-in-chief. Rebuttal testimony and exhibits need not be submitted prior to the hearing. Rebuttal evidence is limited to evidence that is responsive to evidence presented in a case-in-chief, and it does not include evidence that should have been presented during the presenter's case-in-chief. It also does not include repetitive evidence. Cross-examination of rebuttal evidence will be limited to the scope of the rebuttal evidence.
- d. **Closing Statements and Legal Arguments:** At the close of the hearing or at other times if appropriate, the hearing officer may allow oral arguments or set a schedule for filing briefs or closing statements. If the hearing officer authorizes the participants to

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<sup>2</sup> The hearing officer may allow additional time for the oral direct testimony of the witness if the witness is adverse to the participant presenting the testimony and the hearing officer is satisfied that the participant could not produce written direct testimony for the witness.

<sup>3</sup> The hearing officer may, for good cause, approve a party's request to use more than two hours total to present direct testimony during the party's case-in-chief.

file briefs, four copies of each brief shall be submitted to the SWRCB, and one copy shall be served on each of the other participants on the service list. A participant shall not attach a document of an evidentiary nature to a brief unless the document is at the time in the evidentiary hearing record or is the subject of an offer of the document in evidence. Every participant filing a brief shall file a statement of service with the brief, indicating the manner of service.

- e. **Large Format Exhibits**: Participants submitting large format exhibits such as maps, charts, and other graphics shall provide the original for the hearing record in a form that can be folded to 8 ½ x 11 inches. Alternatively, participants may supply, for the hearing record, a reduced copy of a large format original if it is readable.
7. **EX PARTE CONTACTS**: During the pendency of this proceeding, commencing no later than the issuance of the Notice of Hearing, there will be no *ex parte* communications between SWRCB members or SWRCB hearing team staff and any of the participants regarding substantive issues within the scope of the proceeding. (Gov. Code, §§ 11430.10-11430.80.) Communications regarding non-controversial procedural matters are permissible, but ordinarily should be directed to SWRCB staff on the hearing team, not SWRCB members. (Gov. Code, § 11430.20, subd. (b).)
8. **RULES OF EVIDENCE**: Evidence will be admitted in accordance with Government Code section 11513. Hearsay evidence may be used to supplement or explain other evidence, but over timely objection shall not be sufficient in itself to support a finding unless it would be admissible over objection in a civil action.
9. **SUBMITTALS TO THE SWRCB**: Notices of Intent to Appear, written testimony and other exhibits submitted to the SWRCB should be addressed as follows:

Division of Water Rights  
State Water Resources Control Board  
P.O. Box 2000, Sacramento, CA 95812-2000  
Attn: Ruben Mora  
**Phone: (916) 341-5387**  
**Fax: (916) 341-5400**  
**Email: [WrHearing@waterboards.ca.gov](mailto:WrHearing@waterboards.ca.gov)**  
**With Subject of "East Fork Russian River"**





**Exhibit Identification Index**

Participant \_\_\_\_\_

Exhibit No.	Description	Status as Evidence		
		Introduced	Accepted	By Official Notice