



**Linda S. Adams**  
Secretary for  
Environmental Protection

# State Water Resources Control Board

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## Executive Office

**Tam M. Doduc, Board Chair**

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**Arnold Schwarzenegger**  
Governor

## NOTICE OF PUBLIC HEARING

### Irish Beach Water District

### Mallo Pass Creek Tributary to Pacific Ocean in Mendocino County

The State Water Resources Control Board will hold a  
Public Hearing on  
**Proposed Revocation of Permit 16622**  
**(Application 24364)**

The **Public Hearing** will commence on  
**Monday, January 26, 2009**  
**no earlier than 1:00 p.m.**  
following the Public Hearing to consider  
Proposed Revocation of License 2329

in  
Coastal Hearing Room  
Joe Serna, Jr./Cal-EPA Building  
1001 I Street, Second Floor  
Sacramento, CA

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### **PURPOSE OF HEARING**

The purpose of this hearing is for the State Water Resources Control Board (State Water Board or Board) to receive evidence relevant to determining whether Permit 16622 (Application 24364) should be revoked because the Permittee has failed to commence, prosecute with due diligence, and complete the work necessary to appropriate water under the permit, and because the Permittee has failed to use beneficially all or part of the water for the purpose for which it was appropriated.

### **BACKGROUND**

Section 1410(a) of the Water Code provides: "There shall be cause for revocation of a permit if the work is not commenced, prosecuted with due diligence, and completed or the water applied to beneficial use as contemplated in the permit and in accordance with this division and the rules and regulations of the board." (Wat. Code § 1410(a).)

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*California Environmental Protection Agency*

The State Water Board issued Permit 16622 on February 27, 1974. The permit authorizes Irish Beach Water District (Permittee) to divert 0.58 cubic foot per second to be diverted from January 1 to December 31 of each year. The maximum amount diverted under this permit shall not exceed 380 acre-feet per year (afa). The permit was modified by order dated February 7, 1989 to allow diversion of 150 gallons per minute, not to exceed 220 afa. As originally issued, the permit requires that construction work be completed by December 1, 1977, and that the water be applied to the authorized use by December 1, 1984.

On September 28, 2007, the State Water Board's Division of Water Rights (Division) issued a Notice of Proposed Revocation based on facts indicating that the Permittee has failed to commence, prosecute with due diligence, and complete the work necessary to appropriate water under Permit 16622 and has failed to apply to beneficial use all or part of the water authorized for appropriation as contemplated in the permit and in accordance with the Water Code and the regulations of the State Water Board.

A copy of the Notice of Proposed Revocation is enclosed with this notice and can be found on the Division's website at: [http://www.waterrights.ca.gov/Hearings/irish\\_beach.html](http://www.waterrights.ca.gov/Hearings/irish_beach.html)

By letter dated October 12, 2007, the Permittee requested a hearing on the proposed revocation.

### **KEY ISSUE**

Has Permittee failed to commence, prosecute with due diligence, and complete the work necessary to appropriate water under the permit, and failed to use beneficially all or part of the water for the purpose for which it was appropriated, such that Permit 16622 should be revoked?

### **HEARING OFFICER AND HEARING TEAM**

State Water Board Vice Chair Gary Wolff, Ph.D., will preside as hearing officer over this proceeding. Other members of the State Water Board may be present during the hearing. State Water Board staff hearing team members will include Matthew Bullock, Staff Counsel; and Ernest Mona and Jean McCue, Water Resource Control Engineers. The hearing team is supervised by Charles Lindsay, Hearings Unit Chief; Les Grober, Hearings and Special Programs Manager; and Victoria Whitney, Division Chief. The hearing team and their supervisors will assist the hearing officer and other members of the State Water Board throughout this proceeding.

### **SEPARATION OF FUNCTIONS**

A staff prosecutorial team will be a party in this hearing. State Water Board prosecutorial team members will include David Rose, Staff Counsel; and Katherine Mrowka, Senior Water Resource Control Engineer. The prosecution team is supervised by James Kassel, Assistant Division Chief.

The prosecution team is separated from the hearing team, and is prohibited from having *ex parte* communications with the hearing officers, other members of the State Water Board, and members of the hearing team regarding substantive issues and controversial procedural issues within the scope of this proceeding. This separation of functions also applies to the supervisors of each team.

## **HEARING PARTICIPATION**

IF YOU WANT TO TAKE PART IN THE EVIDENTIARY HEARING, you should carefully read the enclosure entitled "Information Concerning Appearance at Water Right Hearings." As stated in that enclosure, everyone wishing to present evidence at the hearing must submit a **Notice of Intent to Appear**, which must be **received** by the State Water Board no later than the deadline listed below. Within one week after the deadline for Notices of Intent to Appear, the State Water Board will mail out a list of those who have indicated a desire to participate in the hearing and a copy of all Notices of Intent to Appear that were timely received by the State Water Board. The list is provided in order to facilitate exchange of written testimony, exhibits and witness qualifications in advance of the hearing. Only parties and other participants who are authorized by the hearing officer will be allowed to present evidence. Copies of witnesses' proposed **testimony, exhibits, lists of exhibits, and qualifications** must be **received** by the State Water Board and served on each of the parties who have indicated their intent to appear, no later than the deadline listed below.

**12 Noon, Tuesday, December 2, 2008**      Deadline for receipt of Notice of Intent to Appear.

**12 Noon, Monday, January 12, 2009**      Deadline for receipt and service of witnesses' proposed testimony, exhibits, lists of exhibits, and qualifications.

## **IF YOU HAVE ANY QUESTIONS**

During the pendency of this proceeding, and commencing no later than the issuance of this notice, there shall be no *ex parte* communications between State Water Board members or State Water Board hearing team staff and any of the other participants, including members of the prosecution team 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 Staff Counsel Matthew Bullock at (916) 341-5164, or by email to [mbullock@waterboards.ca.gov](mailto:mbullock@waterboards.ca.gov).

## **PARKING, ACCESSIBILITY AND SECURITY**

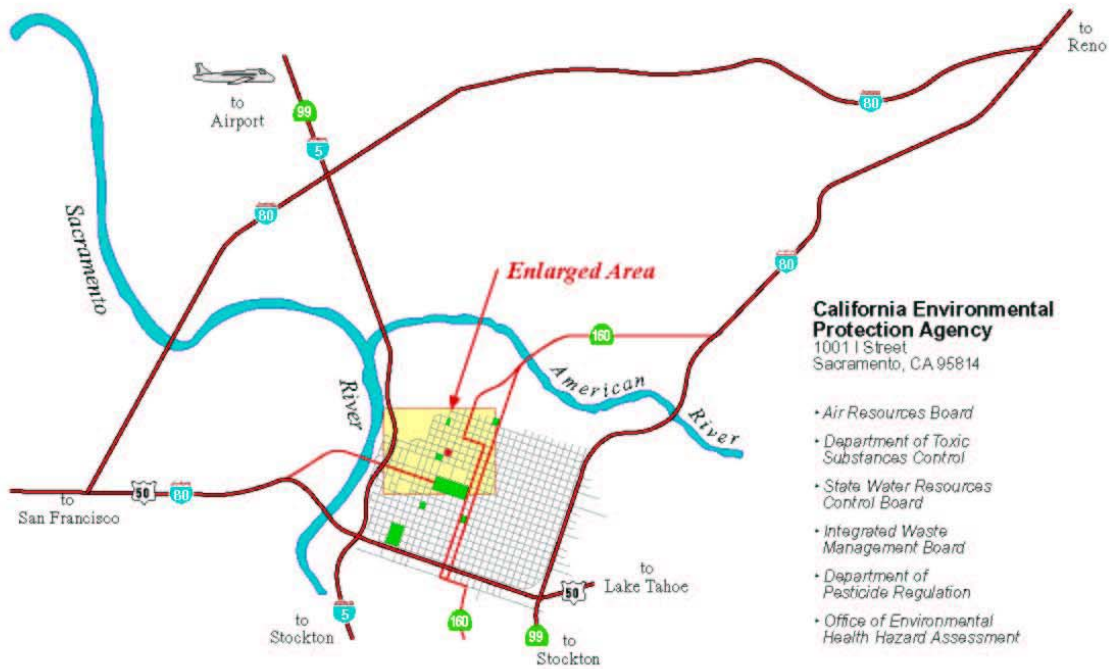
The enclosed maps show the location and parking for the Joe Serna Jr./Cal-EPA Building in Sacramento. The Joe Serna Jr./Cal-EPA Building is accessible to people with disabilities. Individuals who require special accommodations at the Joe Serna Jr./Cal-EPA Building are requested to contact Catherine Foreman, Office of Employee Assistance, at (916) 341-5881.

Due to enhanced security precautions at the Cal-EPA Headquarters Building, all visitors are required to register with security staff 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 driver's 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 up to fifteen minutes. Please allow adequate time to sign in before being directed to the hearing.

November 3, 2008  
Date

*Jeanine Townsend*  
Jeanine Townsend  
Clerk to the Board

Enclosures



**Parking Lot Locations**



**Parking Lot Locations**

- Lot 1 (7th & G St.)
- Lot 2 (7th & G St.)
- Lot A (7th & Capitol)
- Lot C (14th & H St.)
- Lot G (3rd & L)
- Lot H (10th & L)
- Lot I (10th & I, 11th & I)
- Lot K (6th & J/L, 7th & K)
- Lot P (2nd & I)
- Lot U (5th & J)
- Lot W (2nd & I St.)

STATE OF CALIFORNIA  
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY  
STATE WATER RESOURCES CONTROL BOARD

**DIVISION OF WATER RIGHTS**

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In the Matter of Permit 16622 (Application 24364)  
**IRISH BEACH WATER DISTRICT**

**NOTICE OF PROPOSED REVOCATION**

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SOURCE: Mallo Pass Creek tributary to Pacific Ocean  
COUNTY: Mendocino

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You are hereby notified, pursuant to sections 1410-1410.2 of the California Water Code, the State Water Resources Control Board (State Water Board), Division of Water Rights (Division), is proposing to revoke Permit 16622 because the Permittee has failed to commence, prosecute with due diligence, and complete the work necessary to appropriate water under the permit, the Water Code, and the State Water Board's regulations. In addition, the Division proposes to revoke Permit 16622 because the Permittee has failed to use beneficially all or part of the water for the purpose for which it was appropriated in accordance with the Water Code.

The proposed revocation is based upon the following facts, information and conclusions:

The State Water Board issued Permit 16622 on February 27, 1974. The permit authorizes Irish Beach Water District (Permittee) to divert 0.58 cubic foot per second to be diverted from January 1 to December 31 of each year. The maximum amount diverted under this permit shall not exceed 380 acre-feet per year (afa). The permit was modified by Order dated February 7, 1989 to allow diversion of 150 gallons per minute, not to exceed 220 afa. The permit requires that construction work be completed by December 1, 1977, and that the water be applied to the authorized use by December 1, 1984.

**A. PERMITTEE HAS FAILED TO COMMENCE, PROSECUTE WITH DUE DILIGENCE, AND COMPLETE THE WORK NECESSARY TO APPROPRIATE WATER UNDER THE PERMIT.**

1. Permittee indicated that project construction had not yet commenced in the attachment to the May 14, 1984 petition for extension of time.
2. Permittee requested, and on October 12, 1984, the Division granted, an extension of time to commence construction or apply the water to full beneficial use. The time extension order required construction to be complete by December 1, 1987, and that water be fully used by December 1, 1988.
3. Permittee failed to complete construction of the project by the December 1, 1987 deadline. The Progress Reports by Permittee (progress reports) for 1985 through 1987 state that construction has not commenced.
4. The Division conducted a site inspection on March 17, 1988, and found that work had not commenced on the diversion project.

5. Permittee requested, and on June 13, 1988, the Division granted, an extension of time to commence construction or apply the water to full beneficial use. The time extension order required construction to be complete by December 31, 1995, and that water be fully used by December 31, 1997.
6. The progress reports for 1989 through 1998 state that construction has not commenced. The 1998 progress report is the last progress report submitted by the Permittee.
7. The Division conducted a licensing inspection on May 25, 1999, and found that the Permittee had not constructed the diversion facility.
8. Permittee requested a ten-year extension of time, by time extension petition dated July 28, 2000. The petition states that no water has been used under this water right permit. The Permittee estimated that construction would begin within "2 to 5 years or more" and water would be fully used in 40 to 50 years.
9. By letter dated October 20, 2004, Division staff requested the Permittee to document the basis for approval of a time extension, pursuant to California Code of Regulations, title 23, section 844. Because the Permittee is the lead agency under California Environmental Quality Act (CEQA) and the Division had not seen any documentation to show that the Permittee had completed any necessary CEQA documentation, Division staff also requested the Permittee to identify a date when it will provide the required CEQA documentation for the time extension petition. Division staff advised the Permittee that failure to respond within 30 days may result in cancellation of the petition, pursuant to section 1701.4 of the California Water Code. Permittee was further advised that Permit 16622 may be revoked due to non-use if the Permittee is unable to document that it will diligently pursue the project described in the permit.
10. The Permittee responded by letter dated December 21, 2004, stating that there are currently 180 homes in Irish Beach and a total of 460 home sites. Given an assumed growth rate of 10 homes per year, and accounting for a commitment to provide hookups for commercial use, Permittee will be responsible for providing water to the equivalent of 477 homes. Permittee has sufficient water from Irish Creek (a different permitted source) and groundwater to serve 336 homes, which means that Permittee has sufficient water for 15 years. The water to be diverted from Mallo Pass Creek pursuant to Permit 16622 is needed to serve the additional 141 homes at buildout.
11. The Permittee's December 21, 2004, letter estimates that water use under Permit 16622 will commence in approximately 15 years. The Permittee could not identify when it would provide the Division with the required CEQA documentation.
12. Permittee's time extension petition was not approved. The Division issued an Order Denying Petition for Extension of Time on July 20, 2006. In Order WR 2006-0015 EXEC, the State Water Board denied the petition for reconsideration of the July 20 order. Therefore, the December 31, 1997 deadline to complete application of water to beneficial use remains effective.
13. Permittee has not submitted annual Progress Reports of Permittee, which summarize water use and project status, as required by conditions in the Permit since the 1998 Progress Report.

- B.     **BASED ON THE ABOVE FACTS AND INFORMATION, THE DIVISION CONCLUDES THAT CAUSE EXISTS FOR THE REVOCATION OF PERMIT 16622 PURSUANT TO WATER CODE SECTION 1410, SUBDIVISION (A) BECAUSE:**

Permittee has failed to commence, prosecute with due diligence, and complete the work necessary to appropriate water under Permit 16622 and has failed to apply to beneficial use all or part of the water authorized for appropriation as contemplated in the permit and in accordance with the Water Code and the regulations of the State Water Board.

As required by Water Code section 1410.1, you are hereby notified that unless the Division receives a written request for a hearing, signed by or on behalf of the Permittee, the State Water Board will revoke Permit 16622, based on the above facts, information and conclusions. The written request for hearing must be postmarked or delivered no later than 15 days from the receipt of this notice. You may request a hearing by delivering or mailing the request to the State Water Board at the following address within the time period provided: Division of Water Rights, P.O. Box 2000, 1001 I Street, Sacramento, CA 95812-2000.

Based on the above facts and conclusions, the State Water Board, Division of Water Rights will revoke Permit 16622 unless the Division receives a written request for hearing within the time period specified above.

STATE WATER RESOURCES CONTROL BOARD

*Victoria A. Whitney, Chief  
Division of Water Rights*

Dated:

PLMiner:plm:01-11-05\hmlung:11-01-06  
u:/PERDRV/PLMiner/24364 Irish Beach NPR-PERMIT edit 10-26-06



## INFORMATION CONCERNING APPEARANCE AT WATER RIGHT HEARINGS

The following procedural requirements will apply and will be strictly enforced:

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 648-648.8, 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 State Water Board is available upon request or may be viewed at the State Water Board's web site: [http://www.waterboards.ca.gov/laws\\_regulations](http://www.waterboards.ca.gov/laws_regulations).

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 procedural requirements shall be filed in writing with the State Water Board and served on the parties. 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 the Irish Beach Water District and the Prosecution Team for the State Water Board. Other persons or entities may participate as authorized by the hearing officer. 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 make objections, offer evidence, conduct cross-examination, make legal argument or otherwise participate in the evidentiary hearing. The rules for policy statements are discussed below.

3. **NOTICE OF INTENT TO APPEAR:** Participants in this hearing must file either an electronic copy or a paper copy of a Notice of Intent to Appear, which must be **received** by the State Water Board no later than **the deadline prescribed in the Hearing Notice**. Failure to submit a Notice of Intent to Appear and exhibits in a timely manner may be interpreted by the State Water Board 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 each witness' 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 their testimony. The witness's testimony must be submitted in writing as described in section 4 below. Participants who do not intend to present a case-in-chief but wish to cross-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 State Water Board 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 State Water Board encourages participants to submit written policy statements, written opening statements, written testimony, exhibits, and an Exhibit Identification Index to the State Water Board 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 State Water Board will mail a service list of parties to exchange information to each person who has submitted a Notice of Intent to Appear. The service list will indicate which participants agreed to accept electronic 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 State Water Board either: seven paper copies of each of its exhibits; or five paper copies and one electronic copy of each of its exhibits. **All electronic and paper copies must be received by the State Water Board no later than the deadline stated in the hearing notice.** 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. Hearing participants who intend to make only policy statements are not required to exchange information and will not receive copies of written testimony or exhibits from the parties.

With its exhibits, each participant must submit to the State Water Board and serve on the other participants a completed Exhibit Identification Index. If possible, each participant should submit to the State Water Board 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 State Water Board and served on the other participants no later than the deadline prescribed in the Hearing Notice.

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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.

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 have discretion to receive in evidence by reference relevant, otherwise admissible, public records of the State Water Board 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 State Water Board 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 State Water Board 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 State Water Board'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 State Water Board in electronic form, using a file format readable by Microsoft Office 2003 software.
  - d. Exhibits that rely on unpublished technical documents will be excluded unless the unpublished technical documents are admitted as exhibits.
  - e. 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.
5. **ELECTRONIC SUBMISSIONS:** Participants are encouraged to submit the following documents to the State Water Board 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 State Water Board 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 may be in a version supported by Microsoft Excel or Word. Electronic submittals to the State Water Board of documents less than 11 megabytes in total size (incoming mail server attachment limitation) may be sent via electronic mail to: [wrhearing@waterboards.ca.gov](mailto:wrhearing@waterboards.ca.gov) with a subject of "Irish Beach Water District Proposed Revocation Hearing." Electronic submittals to the State Water Board of documents greater than 11 megabytes in total 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 State Water Board, 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 State Water Board. 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 State Water Board will post a list of all exhibits submitted for the hearing on its website at: [http://www.waterrights.ca.gov/Hearings/irish\\_beach.html](http://www.waterrights.ca.gov/Hearings/irish_beach.html)

6. **ORDER OF PROCEEDING:** The State Water Board member 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. The time limits specified below may be changed by the hearing officer, at his discretion, as a result of the pre-hearing conference.
  - a. **Policy Statements Within the Evidentiary Hearing:** Pursuant to California Code of Regulations, title 23, section 648.1, subdivision (d), the State Water Board will provide an opportunity for presentation of non-evidentiary policy statements or comments by interested persons who are not hearing participants. Policy statements will be heard at the start of the hearing, immediately after a 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 pre-hearing 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 State Water Board 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, a 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 a 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 a hearing officer may allow a participant to designate a person technically qualified in the subject being considered to examine a witness. State Water Board members and the State Water Board's counsel may ask questions at any time, and the State Water Board 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 file briefs, five copies of each brief shall be submitted to the State Water Board, 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.

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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.

7. **EX PARTE CONTACTS:** During the pendency of this proceeding, commencing no later than the issuance of the Notice of Hearing, there shall be no *ex parte* communications between either State Water Board members or State Water Board hearing team staff and supervisors, and any of the other participants, including the members of the prosecution team and their supervisors, regarding substantive or controversial procedural issues within the scope of the proceeding. (Gov. Code, §§ 11430.10-11430.80.) Communications regarding non-controversial procedural matters are permissible and should be directed to staff on the hearing team, not State Water Board members. (Gov. Code, § 11430.20, subd. (b).) A document regarding *ex parte* communications entitled "Ex Parte Questions and Answers" is available upon request or from our website at:  
[http://www.waterboards.ca.gov/laws\\_regulations/docs/exparte.pdf](http://www.waterboards.ca.gov/laws_regulations/docs/exparte.pdf).
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.

**NOTICE OF INTENT TO APPEAR**

\_\_\_\_\_ plans to participate in the water right hearing regarding  
(name of party or participant)

**Proposed Revocation Hearing**

**Irish Beach Water District  
Mallo Pass Creek Tributary to Pacific Ocean  
in Mendocino County  
Permit 16622 (Application 24364)**

**scheduled for  
January 26, 2009**

- I/we intend to present a policy statement only.
- I/we intend to participate by cross-examination or rebuttal only.
- I/we agree to accept electronic service of hearing-related materials.
- I/we plan to call the following witnesses to testify at the hearing.

NAME	SUBJECT OF PROPOSED TESTIMONY	ESTIMATED LENGTH OF DIRECT TESTIMONY	EXPERT WITNESS (YES/NO)

(If more space is required, please add additional pages or use reverse side.)

Name, Address, Phone Number and Fax Number of Attorney or Other Representative:

Signature: \_\_\_\_\_ Dated: \_\_\_\_\_

Name (Print): \_\_\_\_\_

Mailing Address: \_\_\_\_\_

Phone Number: ( ) \_\_\_\_\_ . Fax Number: ( ) \_\_\_\_\_

E-mail: \_\_\_\_\_

