



Linda S. Adams
Secretary for
Environmental Protection

State Water Resources Control Board

Division of Water Rights

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P.O. Box 2000 ♦ Sacramento, California 95812-2000
Fax: 916.341.5400 ♦ www.waterboards.ca.gov/waterrights



Arnold Schwarzenegger
Governor

NOTICE OF PUBLIC HEARING

Minnie A. Corda, LLP & Testamentary Trust of Ernest H. Corda

Unnamed Streams tributary to San Antonio Creek in Marin County

The State Water Resources Control Board will hold a
Public Hearing to Determine whether to adopt a
Cease and Desist Order

against

Minnie A. Corda, LLP & Testamentary Trust of Ernest H. Corda

The **Public Hearing** will commence on
Monday, July 20, 2009, at 10:00 a.m.

in the

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

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 to adopt, with or without revision, draft Cease and Desist Order 2008-00XX-DWR (CDO) against Minnie A. Corda, LLP and Testamentary Trust of Ernest H. Corda (Corda). A quorum of the Board may be present during the hearing. The State Water Board may adopt an order regarding the hearing the following day, **Tuesday, July 21, 2009**, at its regularly scheduled Board meeting.

BACKGROUND

When the State Water Board determines that any person is violating, or threatening to violate certain water-right-related requirements, the Board may issue an order to that person to cease and desist from that violation. (Water Code § 1831, subds. (a), (d).) The State Water Board may issue such a Cease and Desist Order (CDO) only after notice and an opportunity for hearing. Unless the State Water Board receives a timely written request for a hearing, the State Water Board may adopt a CDO without a hearing.

On January 30, 2008, the Assistant Deputy Director for Water Rights issued draft CDO 2008-00XX-DWR against Corda for the violation and threatened violation of the prohibition against unauthorized diversion and use of water. The basis of the draft CDO is Corda's alleged unauthorized diversion and consumptive use of water from an unnamed stream tributary to San Antonio Creek in Marin County without a legitimate basis of right. A copy of the draft CDO is

California Environmental Protection Agency

enclosed and can be found on the Division of Water Rights' website at http://www.waterboards.ca.gov/waterrights/water_issues/programs/hearings/corda.

By letter dated February 19, 2008, Corda requested a hearing on the draft CDO.

KEY ISSUES

Should the State Water Board adopt CDO WR 2008-00XX-DWR? If the draft CDO should be adopted, should any modifications be made to the measures in the draft order, and what would be the basis for such modifications?

HEARING OFFICER AND HEARING TEAM

State Water Board Member Arthur G. Baggett, Jr., will preside as hearing officer over this proceeding. As stated above, a quorum of the Board may be present during the hearing and the State Water Board may adopt an order the following day at its Board meeting. State Water Board staff hearing team members will include Nathan Jacobsen, Staff Counsel, and Jean McCue and Ernest Mona, Water Resource Control Engineers. The hearing team is supervised by Charles Lindsay, Hearings Unit Chief; Les Grober, Hearings and Special Programs Manager; Victoria Whitney, Deputy Director for Water Rights; and Andy Sawyer, Assistant Chief Counsel. 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; Mark Stretars, Senior Water Resource Control Engineer; and Chuck Arnold, Water Resource Control Engineer. The prosecution team is supervised by John O'Hagan, Enforcement Section Manager; and James Kassel, Assistant Deputy Director for Water Rights.

The prosecution team is separated from the hearing team and is prohibited from having *ex parte* communications with the hearing officer, 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. **If Corda fails to submit a Notice of Intent to Appear by the deadline specified in this notice, the State Water Board will deem their request for a hearing regarding the CDO to be withdrawn, and the CDO may be imposed without further notice.**

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, qualifications, and statement of service** 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, Wednesday, June 10, 2009 Deadline for receipt of Notice of Intent to Appear.

12 Noon, Wednesday, June 24, 2009 Deadline for receipt and service of witnesses' proposed testimony, exhibits, lists of exhibits, qualifications, and statement of service.

SUBMITTALS TO THE WATER BOARD

Notices of Intent to Appear, written testimony, and other exhibits submitted to the State Water Board should be addressed as follows:

Division of Water Rights
State Water Resources Control Board
Attention: Jean McCue
P.O. Box 2000, Sacramento, CA 95812-2000 (by mail)
1001 I Street, 2nd Floor, Sacramento, CA 95814 (by hand delivery)

Phone: (916) 341-5351

Fax: (916) 341-5400

Email: wrhearing@waterboards.ca.gov

With Subject of "Corda CDO Hearing"

IF YOU HAVE ANY QUESTIONS

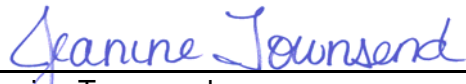
During the pendency of this proceeding, and commencing no later than the issuance of this notice, there shall be no *ex parte* communications between State Water Board members or State Water Board hearing team staff and any of the other participants, including members of the prosecution team regarding 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 Nathan Jacobsen at (916) 341-5181, or by email to njacobsen@waterboards.ca.gov, or Staff Engineer Jean McCue at (916) 341-5351, or by email to jmccue@waterboards.ca.gov.

PARKING, ACCESSIBILITY AND SECURITY

A map to the Joe Serna Jr./Cal-EPA Building and parking information are available at <http://www.calepa.ca.gov/EPABldg/location.htm>. For security purposes, all visitors are required to sign in and receive a badge prior to entering the building. Valid picture identification may be required due to the security level so please allow up to 15 minutes for this process.

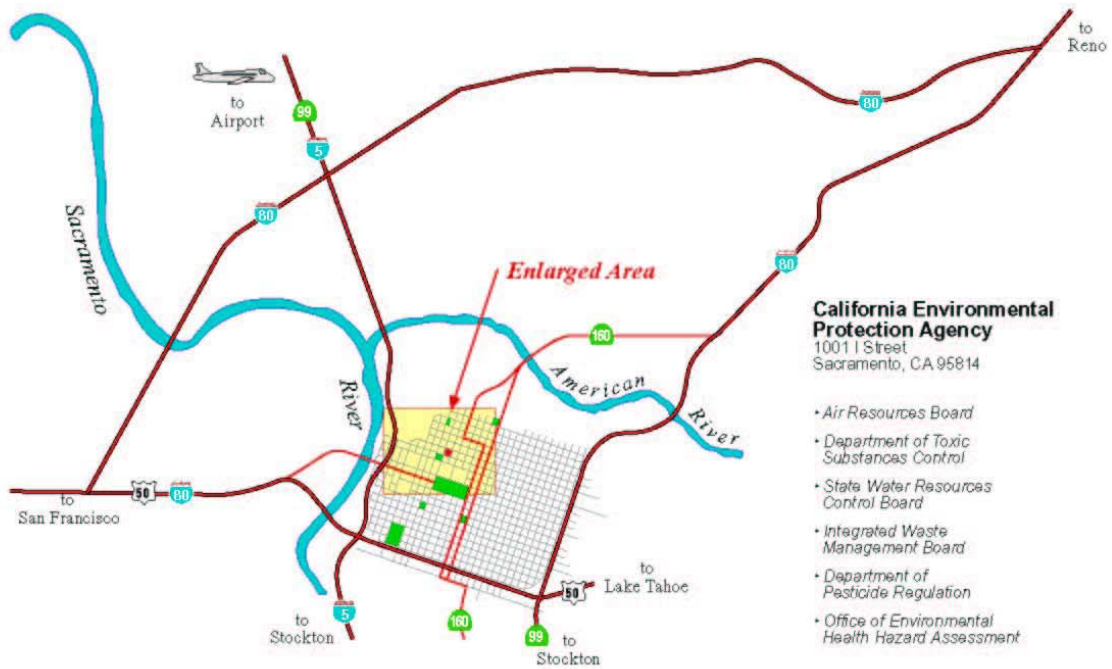
The Joe Serna Jr./Cal-EPA Building is accessible to people with disabilities. Individuals who require special accommodations at the Joe Serna Jr./Cal-EPA Building are requested to contact Catherine Foreman, Office of Employee Assistance, at (916) 341-5881.

May 29, 2009
Date



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

In the Matter of Unauthorized Diversion by
Minnie A. Corda, LLP and Testamentary Trust of Ernest H. Corda
Cease and Desist Order WR 2008-00XX

SOURCE: Unnamed Streams tributary to San Antonio Creek thence Petaluma River
COUNTY: Marin County

YOU ARE HEREBY GIVEN NOTICE THAT:

The State Water Resources Control Board (State Water Board) is authorized under Water Code section 1831 to issue a Cease and Desist Order (CDO) requiring Minnie A. Corda LLP, and Testamentary Trust of Ernest H. Corda (Corda) to cease their unauthorized collection of water to storage and violations of the conditions of License 7165 (Application 18859). With the cancellation of Application 31036 on November 14, 2006 that sought additional water rights, Corda continues to violate the conditions of License 7165 and collect water to storage in the Lower Reservoir. Therefore, the State Water Board is authorized to issue a CDO in accordance with Water Code section 1831(d) which states:

The State Water Resources Control Board (State Water Board) is authorized to issue a cease and desist order (CDO) when it determines that any person is violating or threatening to violate any of the following:

- (1) The prohibition set forth in section 1052 against the diversion or use of water subject to division 2 (commencing with section 1000) of the Water Code other than as authorized by division 2.
- (2) Any term or condition of a permit, license, certification, or registration issued under division 2 of the Water Code.
- (3) Any decision or order of the board issued under part 2 (commencing with section 1200) of division 2 of the Water Code, section 275, or article 7 (commencing with section 13550) of chapter 7 of division 7 of the Water Code, in which decision or order the person to whom the CDO will be issued, or a predecessor in interest to that person, was named as a party directly affected by the decision or order.

On {ADD DATE}, and in accordance with the provisions of section 1834 of the California Water Code, the State Water Board, Division of Water Rights (Division) provided notice of the CDO against Corda for the violation and threatened violation of the prohibition against unauthorized diversion and use of water.

FACTS AND INFORMATION

The facts and information upon which this CDO is based are as follows:

1. Records of the Marin County Assessor's Office show that Corda is the current owner of Marin County Assessor's Parcel Number 125-040-04. Aerial photographs show that four reservoirs are located on this property.
2. License 7165 (Application 18859) issued on March 1, 1965, authorizes the collection of 23 acre-feet per annum (AFA) to storage at the Upper Reservoir for stockwatering, recreation and fish culture purposes.
3. On March 21, 2000, Corda filed Application 31036 with the Division to divert 298 AFA of water to storage in four reservoirs for the purpose of vineyard irrigation and frost protection on over 500 acres of vineyard. Application 31036 proposed to: 1) increase the storage capacity of the Upper Reservoir covered by License 7165 and to cover the additional irrigation use from the reservoir, 2) cover the storage in the existing Lower Reservoir including expansion of its existing capacity, and 3) develop and construct two additional large reservoirs.
4. On October 25, 2006, Division staff conducted a compliance inspection of four reservoirs noted on the Corda property, Marin County Assessor's Parcel number 125-040-04, located at 833 Chileno Valley Road. Division staff observed the following:
 - a) The Upper Reservoir covered by License 7165, having a capacity of approximately 34 AF, has been used to irrigate 43 acres of vineyard. License 7165 authorizes 23 AF of storage to be used for stockwatering, recreation and fish culture purposes. This stored water has been used consumptively for vineyard irrigation, which is not authorized by the license. Application 31036 was filed to increase the storage capacity of the reservoir and cover the additional uses from the reservoir.
 - b) Two reservoirs with estimated capacities of less than 10 AF each are located on the property. Division staff confirms that The Department of Fish and Game (DFG) received Applications to Appropriate Water by Livestock Stockwatering Registration from Corda.
 - c) A fourth reservoir, designated as the Lower Reservoir, has an estimated capacity of about 10 AF. Division staff estimated the capacity based on a measured surface area of 3.8 acres and a water depth to the spillway invert of approximately 3 feet. Corda confirmed that the reservoir is used for non-consumptive uses including stockwatering, recreation, fire protection, wildlife enhancement and preservation, as well as for sediment and flood control. Application 31036 was filed to increase the capacity of the Lower Reservoir to 49 AF and allow use of the water for vineyard irrigation and frost protection purposes in addition to the existing uses.
 - d) Construction of the two other large reservoirs proposed under Application 31036 has not proceeded and there was no evidence of construction at the reservoir sites at the time of inspection
5. By letter dated November 14, 2006, the Division notified Corda that Application 31036 had been cancelled. The Order Canceling the Application indicated that the cancellation was the result of Corda's lack of due diligence in pursuing actions required within the Memorandum of Understanding for preparation of environmental documents.

6. On November 29, 2006, Mr. Henry Corda contacted the Division requesting reconsideration of the Cancellation Order. On February 23, 2007, State Water Board Order WR 2007-0006-EXEC denied the petition for reconsideration.
7. With the confirmed cancellation of Application 31036, Corda is in violation of the conditions of License 7165 in that; 1) there exists the potential for the collection of storage in excess of the amounts authorized by License 7165 at the Upper Reservoir, and 2) vineyard irrigation constitutes an unauthorized use under License 7165. Additionally, with the cancellation of Application 31036, the collection of water to storage in the Lower Reservoir constitutes an unauthorized diversion of water.

IT IS HEREBY ORDERED, pursuant to sections 1831 through 1836 of the Water Code, that Corda shall cease and desist from unauthorized diversion and use of water in excess of Corda's legal rights and shall pursue the following corrective actions and time schedules outlined herein:

1. ACTIONS ASSOCIATED WITH LICENSE 7165 AND THE UPPER RESERVOIR

- a) Within **90 days** of the date of this Order, Corda shall have a registered Civil Engineer perform a survey of the Upper Reservoir to establish the existing capacity of the reservoir. The engineer shall also design and install a staff gauge that correlates the depth vs. capacity relationship, for the purpose of determining the capacity of the reservoir at varying water levels in the reservoir. This will allow Corda to insure that water collected to storage in any single year does not exceed the 23 AFA authorized by License 7165.
- b) No later than **120 days** from the date of this order, Corda shall submit a copy of the capacity survey, the depth vs. capacity relationship curves (chart), and photographic evidence that a staff gauge has been installed.
- c) Following the installation of the staff gauge, Corda shall maintain a record of the monthly staff gage readings at Upper Reservoir along with the reservoir's maximum and minimum water level of each year and the dates that these levels occurred. Additionally the record shall identify the amount of storage collected during each year. The readings shall be supplied to the State Water Board when requested and with the Reports of Licensee required for License 7165.
- d) Corda shall release all water that flows into the Upper Reservoir in excess of the 23 AF per year amount allowed under existing License 7165 using the existing outlet works, or any other means, to prevent unauthorized water from being collected to storage.
- e) If Corda exercises a riparian right to irrigate or frost protect the vineyard with water from the Upper Reservoir during a period of time when steamflow is entering the reservoir, a staff gauge reading shall be made and recorded prior to commencement of irrigation and daily reading shall be made and recorded thereafter until diversions are completed. This record is in addition to the monthly records required by condition 1.c) above, and shall be submitted along with the information in condition 1.c), above.
- f) No later than **120 days** from the date of this order, Corda shall either: (1) File a Petition for Change in Place of Use and Purpose of Use for License 7165, or (2) Discontinue use of the upper reservoir for uses other than stockwatering, as follows:
 - 1) If a Petition for Change in Place of Use and Purpose of Use for License 7165 is filed, the petition shall request the addition of irrigation use and frost protection use (if applicable) to the existing licensed purposes of use and shall request that

those portions of the existing 43 acres of vineyard that are outside of the existing place of use be added to the existing licensed place of use. If this alternative is selected, Corda shall demonstrate, using the monthly staff gauge readings, that no more than 23 AF of water is collected to storage or applied to the vineyard in any one year. If frost protection is intended to be a use of water, Corda must additionally provide evidence that the 23 acre-feet of water available under License 7165 is sufficient to provide for both the irrigation and frost protection demands of the vineyard. If a Petition is filed, Corda shall diligently take all actions required by the Division within the timelines specified, unless otherwise extended for good cause, for approval of the petition in accordance with California Code of Regulations, Title 23, Article 15; or,

- 2) In lieu of filing the Petition for Change, Corda shall permanently discontinue use of the upper reservoir for irrigation and frost protection purposes and shall **prior to May 1, 2008**, submit photographic evidence that any pump facilities or pipelines currently used to supply water for other than stockwatering purposes have been dismantled and removed from the reservoir site.

2. ACTIONS ASSOCIATED WITH THE LOWER RESERVOIR

- a) Within **90 days** of the date of this Order, Corda shall have a registered Civil Engineer perform a survey of the Lower Reservoir to establish the existing capacity of the reservoir. The engineer shall also design and install a staff gauge that correlates the depth vs. capacity relationship, for the purpose of determining the capacity of the reservoir at varying water levels in the reservoir.
- b) No later than **120 days** from the date of this order, Corda shall submit a copy of the capacity survey, the depth vs. capacity relationship curves (chart), and photographic evidence that a staff gauge has been installed.
- c) Following the installation of the staff gauge and until a valid basis of right is approved by the Division for the Lower Reservoir, Corda shall maintain a monthly record of the staff gauge readings of the Lower Reservoir. The readings shall be supplied to the State Water Board on May 1 of each year.
- d) Until such time as a basis of right is approved by the Division, Corda shall release any water that has been collected above the previous month's staff gauge reading using existing outlet works, or any other means (pumping or siphoning), to prevent water not authorized to be collected to storage from being stored in the Lower Reservoir.
- e) Within **150 days** of the date of this Order, Corda shall; (1) File the appropriate Water Right Application with the Division of Water Rights and pursue securing a legitimate basis of right, or (2) Render the Lower Reservoir incapable of storing water as follows:
 - 1) If the results of the survey for the Lower Reservoir identify that its capacity is 10 AF, or less, and the reservoir will be used for stockwatering purposes, Corda shall file an Application to Appropriate Water by Livestock Stockwatering Registration. Corda shall initially submit the application to the DFG and provide notice to the Division of that filing. Upon receipt of DFG's response to the application and any associated conditions, Corda shall submit the application along with DFG's conditions and the required filing fee to the Division.
 - 2) If the reservoir capacity is greater than 10 acre-feet and Corda does not wish to lower the spillway to make the capacity less than 10 acre-feet to proceed with the

steps in item e)1 above, then Corda shall file an Application to Appropriate Water by Permit along with all necessary filing fees and supplemental forms and information, and shall diligently take all actions required by the Division within the timelines specified, unless otherwise extended for good cause, in accordance with California Code of Regulations, Title 23, Chapter 2, or

- 3) In lieu of filing an Application to Appropriate Water for the Lower Reservoir, Corda shall render the Lower Reservoir incapable of storing water. This shall be accomplished as follows:
 - a) Corda shall submit a plan and time schedule for the approval of the Division, DFG, and the Regional Water Quality Control Board that identifies how and when the Lower Reservoir, not covered by a legitimate basis of right, will be rendered incapable of storing water.
 - b) Corda shall secure all necessary permits required by DFG and the Regional Water Quality Control Board for alteration of the Lower Reservoir and shall comply with all requirements from these agencies when rendering the reservoir incapable of storing water.
 - c) Corda shall submit quarterly progress reports to the Division on the status of work, until such time as the reservoir has been altered sufficiently that it will not store water. Photographs of the completed work, showing no water storage at the location of the existing reservoir shall be submitted to substantiate completion of the work.

3. ACTIONS ASSOCIATED WITH REGISTRATION OF LIVESTOCK STOCKPOND APPROPRIATIONS

- a). Within 30 days of the receipt of the conditions specified by DFG for Corda's current Applications to Appropriate Water by Livestock Stockwatering Registration, Corda shall submit the applications forms with accompanying DFG conditions and the appropriate filing fees to the Division.
4. Corda shall comply with all written directives of the Assistant Deputy Director for Water Rights until such time as the State Water Board authorizes the above actions covering water rights for the two reservoirs, or directs otherwise. In the event that Corda fails to comply with the requirements of the above time schedules, Corda shall be in violation of this CDO and subject to monetary penalties and further enforcement actions as described below.

Upon the failure of any person or entity to comply with a CDO issued by the State Water Board pursuant to Chapter 12 of the Water Code (commencing with section 1825), and upon the request of the State Water Board, the Attorney General shall petition the superior court for the issuance of prohibitory or mandatory injunctive relief as appropriate, including a temporary restraining order, preliminary injunction, or permanent injunction. (Water Code, § 1845, subd. (a).) section 1845, subdivision (b) of the Water Code provides:

- (1) Any person or entity that violates a cease and desist order issued pursuant to this chapter may be liable for a sum not to exceed one thousand dollars (\$1,000) for each day in which the violation occurs.

- (2) Civil liability may be imposed by the superior court. The Attorney General, upon request of the [board], shall petition the superior court to impose, assess, and recover those sums.
- (3) Civil liability may be imposed administratively by the [board] pursuant to section 1055.

STATE WATER RESOURCES CONTROL BOARD

*James W. Kassel, Assistant Deputy Director
Division of Water Rights*

Dated:

DRAFT

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 760-767, 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.

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 Minnie A. Corda, LLP, Testamentary Trust of Ernest H. Corda, and the Prosecution Team for the State Water Board. Other persons or entities wishing to participate as parties may do so only if 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. Any faxed or emailed Notices of Intent to Appear must be followed by a mailed or delivered hard copy with an original signature.

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 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.¹ 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: 7 paper copies of each of its exhibits; or 5 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.**

The following requirements apply to exhibits:

¹ 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.

- 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 into 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 into 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. Please refer to section 4 regarding submission of exhibits.

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 with a subject of "Corda CDO 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 to the e-mail address provided on the Notice of Intent. Participants who agree to electronic service may request

that specific documents be provided to them in paper copy, or by mail on CD. 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.waterboards.ca.gov/waterrights/water_issues/programs/hearings/corda.

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 or her discretion.
 - 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. Each participant will be allowed up to **30 minutes** total to present its opening statement and all of its direct testimony.²
 - 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 these points and the key hearing issues. A participant may submit a written opening statement. Please see section 5, above, for details regarding electronic submittal of written opening statements. Any

² The hearing officer may, for good cause, approve a party's request for additional time to present direct testimony during the party's case-in-chief. In addition, 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.

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 should summarize or emphasize their written testimony on direct examination.
 - c. **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 **30 minutes** 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.
 - d. **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.
 - e. **Closing Statements and Legal Arguments:** At the close of the hearing or at other times if appropriate, the hearing officer may allow closing or legal arguments.
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.
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)

Cease and Desist Order Hearing

**Minnie A. Corda, LLP & Testamentary Trust of Ernest H. Corda
Unnamed Streams Tributary to San Antonio Creek
in Marin County**

**scheduled to commence
Monday, July 20, 2009**

Check all that apply:

- 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: _____

