



State Water Resources Control Board



Winston H. Hickox
Secretary for
Environmental
Protection

Division of Water Rights
1001 I Street, 14th Floor • Sacramento, California 95814 • (916) 341-5359
Mailing Address: P.O. Box 2000 • Sacramento, California • 95812-2000
FAX (916) 341-5400 • Web Site Address: <http://www.waterrights.ca.gov>

Gray Davis
Governor

*The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption.
For a list of simple ways you can reduce demand and cut your energy costs, see our Web-site at <http://www.swrcb.ca.gov>.*

NOTICE OF PUBLIC HEARING AND PRE-HEARING CONFERENCE

The State Water Resources Control Board will hold a hearing on Administrative Civil Liability Complaint 262.5-35 issued against Metropolitan Water District of Southern California for diversion or use of water from Cajalco Creek at Lake Mathews in Riverside County

**A Pre-Hearing Status Conference will commence
on Tuesday, October 21, 2003, at 2:00 p.m.**

at

**Joe Serna Jr./Cal EPA Building
Sierra Hearing Room – Second Floor
1001 I Street, Sacramento**

**The hearing will commence on Monday, November 17, 2003 at 10:00 a.m.
and continue, if necessary, on Tuesday, November 18, 2003 at 10:00 a.m.**

at

**Joe Serna Jr./Cal EPA Building
Sierra Hearing Room – Second Floor
1001 I Street, Sacramento**

SUBJECT OF THE HEARING

The purpose of this hearing is to receive evidence to be considered by the State Water Resources Control Board (SWRCB) relevant to determining whether Administrative Civil Liability (ACL) Complaint 262.5-35 (Complaint) issued by the Chief of the Division of Water Rights (Division) against Metropolitan Water District of Southern California (MWD), should be adopted with or without revisions.

PRE-HEARING CONFERENCE

The hearing officers will conduct a pre-hearing status conference on Tuesday, October 21, 2003, at 2:00 p.m., to discuss the scope of the hearing and any other appropriate procedural issues. The goal of the pre-hearing conference is to ensure that the hearing proceeds in an orderly and expeditious manner. There will be no discussion during the pre-hearing

conference of the merits of the specific issues raised by the Complaint. Following the pre-hearing conference, the SWRCB may in its discretion modify this notice in whole or in part. All parties to the hearing must attend the pre-hearing conference. Failure to attend the pre-hearing conference may result in exclusion from participation in the hearing.

BACKGROUND

On May 28, 2003, the Chief of the Division issued the Complaint against MWD. The Complaint alleges that MWD violated Water Code section 1052, subdivision (a), which states: “the diversion or use of water subject to this division other than as authorized in this division is a trespass.” The Complaint proposed imposition of ACL of \$135,000 on MWD. On June 19, 2003, MWD submitted a request for hearing.

The Complaint includes the following allegations:

- a) MWD owns and operates Mathews Dam and Lake Mathews, located within Township 8 South, Ranges 5 and 6 West, San Bernardino Base and Meridian. Mathews Dam was constructed in 1938 on Cajalco Creek by MWD as the terminal reservoir of the Colorado River Aqueduct. It was constructed for the purpose of regulating the diversions from the Colorado River to serve Southern California. Permits 7640, 7641 and 7642 (Applications 4997, 6406 and 6840, respectively) cover MWD's diversion of water from the Colorado River. These applications were filed and the Division issued permits that incorporated the “Seven-Party Priority Agreement,” an agreement that established a priority system for Colorado River water use among California water users. In addition, MWD uses Colorado River water pursuant to a contract with the United States Bureau of Reclamation under the Boulder Canyon Project Act. These permits and this contract do not authorize the diversion, storage or use of the waters of Cajalco Creek at Lake Mathews.
- b) According to the Department of Water Resources, Division of Safety of Dams (DOSOD), Lake Mathews has a capacity of 182,000 acre-feet (DWR Bulletin 17-00).
- c) By Memorandum dated February 25, 1999, the DOSOD notified the Division that MWD had proposed the construction of the Cajalco Creek Detention Dam with a storage capacity of 889 acre-feet. The detention dam is located upstream of Lake Mathews on Cajalco Creek with an upstream drainage area of 22.1 square miles.
- d) By letter dated March 25, 1999, the Division requested MWD to identify its basis of right authorizing the storage of water at the detention basin or explain why the project would not be subject to the water right permitting authority of the SWRCB.
- e) MWD’s response dated August 5, 1999, requested a waiver of water right requirements for the project and stated the detention dam is designed to improve the quality of water from the Lake Mathews watershed to protect the quality of Lake Mathews. MWD stated that the project would detain the storm water for not more than five days in order to allow sediments to settle. MWD also identified that the SWRCB approved funding for up to \$20 million from the State Revolving Fund for Phase I of the Drainage Water Quality Management Plan for the Lake Mathews Watershed Project, which included the Cajalco Creek Detention Dam and Basin.

- f) By letter dated August 25, 1999, the Division acknowledged that a water right permit would not be required for the Cajalco Creek Detention Dam and Basin, provided it was operated as stated. In this letter the Division also requested MWD to identify its basis of right to store and use the waters of the Cajalco Creek watershed at Lake Mathews.
- g) The Division sent another letter dated November 24, 1999, and telephoned MWD representatives on January 1 and 13, 2000, requesting a response to the Lake Mathews water right issue. By letter dated February 1, 2000, MWD responded and requested additional time to research records for potential existing pre-1914 appropriative water rights. By letter dated February 25, 2000, the Division agreed to allow MWD until July 1, 2000, to conduct research, but warned that the SWRCB may take enforcement action pursuant to Water Code section 1052, subdivision (b) without further notice.
- h) MWD representatives met with Division staff on October 17, 2000, to discuss the matter and the Division agreed to allow even more time for MWD to complete its research on possible pre-1914 appropriative water rights to Cajalco Creek.
- i) By letter dated May 7, 2001, MWD responded, indicating that it was unable to identify a water right allowing the diversion and use of Cajalco Creek at Lake Mathews.
- j) In the absence of a documented right to divert and store Cajalco Creek, MWD proposed a physical solution to discharge flows into Cajalco Creek below the dam, and acknowledged that it should be able to complete the necessary work by at least March 2002. MWD estimated the average annual inflow of Cajalco Creek to be 500 acre-feet, ranging from less than 100 acre-feet, to more than 700 acre-feet per year, primarily occurring January through March. Of this amount it was estimated that measured seepage below the dam returns approximately 50 to 100 acre-feet to the creek bed per year.
- k) In July 2001, Division staff visited Lake Mathews and met with MWD representatives to review MWD's plan for a physical solution to prevent any future unauthorized diversion and use of Cajalco Creek water at Lake Mathews. During this site visit, Division staff observed the facilities proposed to be used to bypass water into the Cajalco Creek channel below the dam, and the measuring site used by MWD to quantify the Cajalco Creek flows entering Lake Mathews. Division staff also observed some of the seepage measuring sites monitored by MWD. No work to install the downstream bypass system below the dam had been completed at the time of the inspection.
- l) MWD has long been aware of the potential for diversion and storage of local runoff at its Colorado River terminal reservoirs. Historical records support that the SWRCB's predecessor, Department of Public Works (DPW), and MWD corresponded about the storage of water at Mathews Dam (formerly known as Cajalco Dam #38) and storage of local runoff at other MWD's facilities. By letter dated October 4, 1938, DPW informed MWD that an application would be necessary if storage of water was involved in the operation of Cajalco Reservoir (Lake Mathews). MWD later stated that no storage of water would occur at any of its terminal reservoirs.

- m) MWD also operates Lake Skinner, completed in 1966, and Diamond Valley Lake, completed in 2001. Because both of these facilities capture local runoff, MWD has memoranda of understanding with local water users establishing a procedure to measure and bypass the local inflow that is captured. MWD has no authorization with the SWRCB or understanding with local water users for Lake Mathews, even after its capacity was enlarged in 1966.
- n) In December 2002, MWD informed the Division that it installed a meter to monitor the required releases of Cajalco Creek flows into Lake Mathews as a physical solution to prevent future unauthorized diversions. To date, it is uncertain whether MWD is releasing Cajalco Creek flows. At least until December 2002, MWD had not modified its operation to bypass Cajalco Creek flows through Lake Mathews into the downstream channel of Cajalco Creek despite being initially informed of the matter in 1999.

KEY ISSUES

The SWRCB's decision whether to adopt ACL Complaint 262.5-35 will be based upon the record developed at the hearing. MWD, the Division's Prosecution Team, and any other interested parties should submit exhibits and testimony responsive to the following issues that will be considered during the hearing:

- 1. Did MWD divert or use water from Cajalco Creek at Lake Mathews?**
- 2. Does MWD have a basis of right to divert or use water from Cajalco Creek at Lake Mathews?**
- 3. Is a permit from the SWRCB required for MWD to divert or use water from Cajalco Creek at Lake Mathews?**
- 4. Should the SWRCB order liability in response to Administrative Civil Liability Complaint 262.5-35?**
- 5. Is the proposed administrative civil liability amount appropriate?**

ABOUT THIS HEARING

In this hearing, the Division will be represented by a prosecution team who will be a party in the hearing. The prosecution team will consist of John O'Hagan, Supervising Engineer and Samantha Olson, Staff Counsel. The prosecution 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 prosecution team will be treated like any other party and the *ex parte* rules, as well as all other hearing requirements, will apply to the prosecution team in the same manner as they will apply to MWD.

The hearing team will consist of the hearing officers and the hearing staff. The hearing staff will assist the hearing officers and the other members of the SWRCB.

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 by **Monday, September 8, 2003**.

To facilitate exchange of testimony, exhibits and witness qualifications, on or about **Wednesday, September 10, 2003**, 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 served upon and received by the SWRCB and each of the parties who have indicated their intent to appear no later than **Friday, October 17, 2003**.

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 Sierra Room is accessible to persons with disabilities.

Due to enhanced security precautions at the Cal/EPA Headquarters Building located at 1001 I Street, Sacramento, all visitors are required to sign in prior to attending any meeting. Sign-in and badge issuance occur in the Visitor and Environmental Services Center. This Center is located just inside and to the left of the building’s public entrance. Depending on their destination and the building 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 cards. 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 the hearing.

\\
\\
\\
\\
\\
\\
\\

IF YOU HAVE ANY QUESTIONS

SWRCB Chairman Arthur G. Baggett and SWRCB Member Nancy Sutley will be the co-hearing officers presiding over this proceeding. SWRCB hearing team members will be Barbara Katz, Senior Staff Counsel, and Ernest Mona, Water Resources Engineer. *Ex parte* communications with members of the Board or SWRCB staff on the hearing team regarding substantive or controversial procedural matters involved in the hearing are prohibited during the pendency of this proceeding. (Gov. Code, §§ 11430.10-11430.80.) Communications regarding routine non-controversial procedural matters (See Gov. Code, § 11430.20, subd. (b).) should be directed to Barbara Katz at (916) 341-5192 (bkatz@exec.swrcb.ca.gov) or Ernest Mona at (916) 341-5359 (emona@waterrights.swrcb.ca.gov).


Debbie Irvin
Clerk to the Board

Enclosure

Date: August 6, 2003

CERTIFIED MAIL

Hearing on ACL Complaint

262.5-35

For Use With Avery 5360

Mailing Labels

Dated: 06/26/03

Mr. Jeffrey Kightlinger
General Counsel
Metropolitan Water District of
Southern California
P.O. Box 54153
Los Angeles, CA 90054-0153

Mr. Phillip Pace, Chairman
Board of Directors
Metropolitan Water District of
Southern California
P.O. Box 54153
Los Angeles, CA 90054-0153

Mr. Ronald Gastelum
Chief Executive Officer
Metropolitan Water District of
Southern California
P.O. Box 54153
Los Angeles, CA 90054-0153

Ms. Samantha Olson
Staff Counsel
State Water Resources
Control Board
Office of Chief Counsel
P.O. Box 100
Sacramento, CA 95812-100

Mr. John O'Hagan
Supervising Engineer
State Water Resources Control Board
Division of Water Rights
P.O. Box 2000
Sacramento, CA 95812-2000

**Mandatory Mailing List for
Water Right Hearings**

B-4

California Environmental
Protection Agency
c/o Winston H. Hickox
Secretary for Env. Prot.
1001 I Street, 25th Floor
Sacramento, CA 95814

California Farm Bureau Fed.
c/o William Dubois
Natural Resources Consultant
11th & L Building, Room 626
Sacramento, CA 95814

The Associated Press
1215 K Street, Suite 960
Sacramento, CA 95814

Yuba-Sutter Appeal Democrat
P.O. Box 431
Marysville, CA 95901

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

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

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

Bob Baiocchi, Consultant
P.O. Box 1790
Graeagle, CA 96103

Flycasters, Inc.
Mondy Lariz
2353 Venndale Ave
San Jose, CA 95124-4930

U.S. Bureau of Reclamation
MP-440
2800 Cottage Way
Sacramento, CA 95825

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

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

Sierra Club
c/o Mr. Bob Rutemoeller
P.O. Box 587
Gualala, CA 95445-0587

Ms. Nancee Murray, SSC
Calif Department of Fish & Game
Office of General Counsel
1416 9th Street, 12th Floor
Sacramento, CA 95814

City of Los Angeles
c/o Mr. Eric P. Bock, P.E.
Department of Water & Power
Los Angeles Aqueduct Division
111 North Hope Street, Rm 1469
Los Angeles, CA 90012

Pechanga Indian Reservation
c/o Mr. Vincent B. Ibanez
P.O. Box 181
Temecula, CA 92390

City Attorney's Office
214 Van Ness Avenue
San Francisco, CA 94102

Mr. John A. Hecht, P.E., President
West Coast Environmental
and Engineering
4253 Transport Street, Suite A
Ventura, CA 93003

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

G-4
Dept. of Boating & Waterways
c/o Mr. Mike Ammon
2000 Evergreen Street, Suite 100
Sacramento, CA 95815-3888

Cary F. Wright
242 East J Street
Chula Vista, CA 91910

California Sportfishing
Protection Alliance
c/o Jim Crenshaw, President
1248 East Oak Avenue
Woodland, CA 95695

Esther Schwartz
Capital Reporters
1300 Ethan Way, Suite 225
Sacramento, CA 95825

Myrlys L. Stockdale
Public Information Officer
State Water Resources Control Board
1001 I Street
Sacramento, CA 95814

Phil Gruenberg
Executive Officer
RWQCB, Colorado River Basin
Region (7)
73-720 Fred Waring Drive, Suite 100
Palm Desert, CA 92260

US Department of Commerce
National Oceanic and Atmospheric
Administration
501 W. Ocean Blvd.; Suite 4200
Long Beach, CA 90802-4213

Jeff Drongeson
California Dept. of Fish and Game
Eastern Sierra & Inland Deserts
Region 6
4775 Bird Farm Road
Chino Hills, CA 91709

Enclosure 1

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 State Water Resources Control Board (SWRCB) is available upon request or may be viewed at the SWRCB's web site:
http://www.swrcb.ca.gov/water_laws/.

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 the MWD, the Division's prosecution 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 who 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 a Notice of Intent to Appear and two copies thereof which must be received by the SWRCB no later than **4:00 p.m. on Monday, September 8, 2003**. 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 the name and address of the participant; and if the participant is a party or desires to be recognized as a party, the name of each witness who will testify on the participant's behalf; a brief description of the proposed testimony; and an estimate of the time, not to exceed 20 minutes, that the witness will take to present a brief oral summary of the witness's testimony. The witness's testimony must be submitted in writing as described in section 4 below. Participants

should indicate how they intend to participate in the hearing by marking the appropriate box on the Notice of Intent to Appear. 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. 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 either 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.

Following receipt of the Notices of Intent to Appear, the SWRCB will mail to each participant who has submitted a notice a service list of participants. The service list will indicate which participants agreed to accept electronic service. No later than **4:00 p.m. on Wednesday, September 17, 2003**, 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 who 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 SWRCB either: (1) six paper copies of each of its exhibits or (2) two 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.

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.

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 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 **4:00 p.m. on Friday, October 17, 2003**, 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.
 - 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 97 (preferred) or Word 97. Electronic submittals to the SWRCB of documents less than 5 megabytes in size may be sent via electronic

mail to: WrHearing@waterrights.swrcb.ca.gov with subject of “**Hearing on ACL Complaint 262.5-35.**” Electronic submittals to the SWRCB of documents greater than 5 megabytes in size should be sent by mail, in PDF format, on ZIP™, JAZ™, or compact disk (CD™) media. Electronic service on participants shall be in the same format as submittals to the SWRCB, but 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/MWD-ACLHearing>.

6. **ORDER OF PROCEEDING:** The SWRCB 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:** Pursuant to California Code of Regulations, title 23, section 648.1, subdivision (c), 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.² Each participant will be allowed up to two hours total to present all of its direct testimony.³
 - 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.

² 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.

³ 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.

- 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 decides to request briefs, the briefs will be due no earlier than 30 days after the estimated date of availability of the Reporter’s Transcript. If the hearing officer authorizes the participants to file briefs, six 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. **AUDIO-VISUAL EQUIPMENT:** Participants who require Audio-Visual Equipment for their presentations should contact the Division one week prior to the first day of hearing to make arrangements with staff.
 8. **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 noncontroversial procedural matters are permissible, but ordinarily should be directed to SWRCB hearing team staff, not SWRCB members. (Gov. Code, § 11430.20, subd. (b).)
 9. **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.

\\
\\
\\
\\
\\
\\

10. **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: Ernest Mona

Phone: (916) 341-5359 Fax: (916) 341-5400

Email: WrHearing@waterrights.swrcb.ca.gov

OR

Email: emona@waterrights.swrcb.ca.gov

With Subject of “Hearing on ACL Complaint 262.5-35”

**ACL Complaint 262.5-35: Water Right Hearing
Exhibit Identification Index**

Participant _____

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