



**Alan C. Lloyd, Ph.D.**  
*Agency Secretary*

# State Water Resources Control Board

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## Division of Water Rights

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**Arnold Schwarzenegger**  
*Governor*

## **REVISED NOTICE OF PUBLIC HEARING**

**The State Water Resources Control Board will hold a Hearing  
to determine whether to:**

- 1. Adopt Draft Cease and Desist Orders against the United States Bureau of Reclamation  
and the California Department of Water Resources  
and**
- 2. Reconsider the Conditional Approval of the April 25, 2005 Water Quality Response Plan  
for use of Joint Points of Diversion by the United States Bureau of Reclamation  
and the California Department of Water Resources**

**Sacramento River, San Joaquin River and Sacramento-San Joaquin Delta Channels  
San Joaquin County**

**Commencing at 10:00 a.m. on Monday, October 24, 2005 at the Joe Serna, Jr./Cal-EPA  
Building, 1001 I Street, Second Floor, Sierra Hearing Room, Sacramento, CA  
and**

**Continuing, if necessary, at 10:00 a.m. on Tuesday, October 25, 2005  
at a time and location to be announced**

**Additional hearing dates, times, and locations will be announced as necessary.**

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### **SUBJECT OF HEARING**

The State Water Resources Control Board (State Water Board or Board) will conduct a hearing to receive evidence relevant to two related topics concerning the water rights of the United States Bureau of Reclamation (USBR) and the California Department of Water Resources (DWR). The purpose of the hearing is for the State Water Board to receive evidence relevant to determining whether to adopt Draft Cease and Desist Orders (CDO) No. 262.31-16 and 262.31-17 against the USBR and the DWR, respectively, with the statements of facts and information set forth in the draft orders. In addition, the State Water Board will receive evidence relevant to its determination on four petitions for reconsideration of the Division of Water Rights (Division) Chief's July 1, 2005 conditional approval of the April 25, 2005 Water Quality Response Plan (WQRP) submitted by the USBR and the DWR for their use of each other's points of diversion (known as Joint Points of Diversion or JPOD) in the southern Sacramento-San Joaquin Delta (Delta). Both matters involve the enforcement of an existing requirement to meet the 0.7 millimhos per centimeter (mmhos/cm) electrical conductivity (EC) objective at certain southern Delta compliance locations between April 1 and August 31.

***California Environmental Protection Agency***

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## **DRAFT CEASE AND DESIST ORDERS**

### **BACKGROUND**

Water Code section 1831, subdivision (a), provides that when the State Water Board determines that any person is violating, or threatening to violate, any requirement described in subdivision (d) of section 1831, the Board may issue an order to that person to cease and desist from that violation. The State Water Board may issue a CDO only after notice and an opportunity for hearing. Such notice shall be by personal notice or by certified mail, and shall inform the person allegedly engaged in the violation (respondent) that he or she may request a hearing within 20 days after the date of receiving the notice. The notice shall contain a statement of facts and information showing the violation. Unless the State Water Board receives a timely written request for a hearing, the State Water Board may adopt a CDO without a hearing. In the case of each of the draft CDOs to be considered in this hearing, the respondent requested a hearing.

License 1986 (Application 23) and Permits 11315, 11316, 11885, 11886, 11887, 11967, 11968, 11969, 11970, 11971, 11972, 11973, 12364, 12721, 12722, 12723, 12725, 12726, 12727, 12860, 15735, 16597, 16600, and 20245 (Applications 13370, 13371, 234, 1465, 5638, 5628, 15374, 15375, 15376, 16767, 16768, 17374, 17376, 5626, 9363, 9364, 9366, 9367, 9368, 15764, 22316, 14858A, 19304, and 14858B, respectively) of the USBR and Permits 16478, 16479, 16481, 16482, and 16483 (Applications 5630, 14443, 14445A, 17512, and 17514A, respectively) of the DWR are subject to conditions imposed by Water Right Decision 1641, revised March 15, 2000, in accordance with Order WR 2000-02 (hereinafter revised Decision 1641).

The USBR and the DWR are jointly and severally responsible for meeting water quality objectives, including certain water salinity objectives in the southern Delta, as described in Table 2 of revised Decision 1641.

### **USBR**

On May 3, 2005, the Division Chief issued Draft CDO No. 262.31-16 to the USBR regarding alleged threatened violation of the license and permits listed above. If the State Water Board adopts the draft CDO, it would find that the USBR is threatening to violate the conditions of its license and permits requiring the USBR to meet the 0.7 mmhos/cm EC objective at all of the southern Delta compliance locations between April 1 and August 31, as required by revised Decision 1641. The CDO would also require the USBR, in cooperation with the DWR, to take specific corrective actions under a time schedule. A copy of Draft CDO No. 262.31-16 can be found at <http://www.waterrights.ca.gov/Hearings/CurrentProjects.htm> under the link for the "Delta Salinity Draft CDO and WQRP Hearing" or by contacting one of the hearing team members assigned to this hearing and listed at the end of this notice.

By letter dated May 20, 2005, the USBR requested a hearing.

## DWR

On May 3, 2005, the Division Chief issued Draft CDO No. 262.31-17 to the DWR regarding alleged threatened violation of the permits listed above. If the State Water Board adopts the draft CDO, it would find that the DWR is threatening to violate the conditions of its permits requiring the DWR to meet the 0.7 mmhos/cm EC objective at three of the southern Delta compliance locations between April 1 and August 31, as required by revised Decision 1641. The CDO would also require the DWR, in cooperation with the USBR, to take specific corrective actions under a time schedule. A copy of Draft CDO No. 262.31-17 can be found at <http://www.waterrights.ca.gov/Hearings/CurrentProjects.htm> under the link for the “Delta Salinity Draft CDO and WQRP Hearing” or by contacting one of the hearing team members assigned to this hearing and listed at the end of this notice.

By memorandum dated May 23, 2005, the DWR requested a hearing.

## **APPROVAL OF THE WQRP**

### **BACKGROUND**

The purpose of the WQRP is to ensure that water quality in the southern and central Delta will not be significantly degraded through operations of JPOD to the injury of water users in the southern and central Delta. The plan is to be prepared with input from a designated representative of the Contra Costa Water District (CCWD). The State Water Board received four timely Petitions for Reconsideration of the Division Chief’s July 1, 2005 approval of the WQRP from CCWD, South Delta Water Agency, Central Delta Water Agency, and the Westside Irrigation District.

All of the petitioners requested reconsideration of Condition 1 of the Division Chief’s approval. Condition 1 requires the USBR and the DWR to meet all of the conditions of their water right permits and licenses in order to use JPOD with one exception. Instead of meeting the required 0.7 mmhos/cm EC objective at specified southern Delta locations, prior to January 1, 2009, Condition 1 states that the USBR and the DWR may conduct JPOD diversions if they meet an EC objective of 1.0 mmhos/cm as long as they are in compliance with the time schedule established in Draft CDOs 262.31-16 and 162.31-17 or any subsequent final order of the State Water Board on this matter.

By Order 2005-0024 dated September 22, 2005, the State Water Board provisionally granted the petitions for reconsideration. The State Water Board ordered that a public hearing be conducted to receive additional information before the State Water Board takes final action on the petitions for reconsideration. At the hearing, the State Water Board will receive evidence on what, if any, changes should be made to the Division Chief’s July 1, 2005 conditional approval of the WQRP.

## **KEY ISSUES**

- 1.) Should the State Water Board issue a CDO to the USBR in response to Draft CDO No. 262.31-16? If a CDO should be issued, what modifications should be made to the measures in the draft order, and what is the basis for such modifications?
- 2.) Should the State Water Board issue a CDO to the DWR in response to Draft CDO No. 262.31-17? If a CDO should be issued, what modifications should be made to the measures in the draft order, and what is the basis for such modifications?
- 3.) What, if any, action should the State Water Board take with respect to the Division Chief's July 1, 2005 conditional approval of the WQRP for use by the USBR and the DWR of each other's points of diversion in the southern Delta? If the State Water Board modifies the conditional approval of the WQRP or takes other appropriate action, what actions or modifications are recommended, and what is the basis for such actions or modifications?

## **ABOUT THIS HEARING**

In this hearing, there will be a staff prosecutorial team who will be a party in the hearing regarding the draft CDOs. The prosecutorial team members will be Larry Lindsay, Water Resource Control Engineer; Mark Stretars, Senior Water Resource Control Engineer; John O'Hagan, Supervising Water Resource Control Engineer; and Erin Mahaney, Staff Counsel. The prosecutorial team is separated by an ethical wall from the hearing team, and is prohibited from having *ex parte* communications with members of the hearing team regarding substantive issues and controversial procedural issues within the scope of this proceeding. The hearing team consists of the Board members and the staff assisting the Board members with the hearing.

State Water Board Chairwoman Tam M. Doduc and Board Member Arthur G. Baggett, Jr. will preside as hearing officers over this proceeding. Other Board members may be present during the hearing. State Water Board staff hearing team members will include Barbara Leidigh, Staff Counsel IV; Diane Riddle, Environmental Scientist; and Jean McCue, Water Resource Control Engineer. The hearing staff will assist the hearing officers and the other members of the State Water Board during the hearing.

## **HEARING PARTICIPATION**

IF YOU WANT TO TAKE PART IN THIS HEARING, you should carefully read the enclosure entitled "Information Concerning Appearance at Water Right Hearings." As stated in that enclosure, parties intending to present evidence at the hearing must submit a **Notice of Intent to Appear**, which must be **received** by the State Water Board no later than **noon on Friday, September 30, 2005**. If you have already submitted a Notice of Intent to Appear and your witness list will not change as a result of adding the additional hearing topic related to the Petitions for Reconsideration of the WQRP, you need not submit another Notice of Intent to Appear. If you have already submitted a Notice of Intent to Appear but your witness list will change as a result of

adding the additional hearing topic, you should submit a revised Notice of Intent to Appear by the required deadline. Any revised Notice of Intent to Appear should be clearly marked "Revised" at the top of the notice and should include all witnesses for both hearing topics.

To facilitate exchange of testimony, exhibits and witness qualifications, on or about **Wednesday, October 5, 2005**, the State Water Board will mail out a list of those parties who have indicated intent to participate in the hearing.

Copies of witnesses' Notice of Intent to Appear, proposed testimony, exhibits, list 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 **noon on Friday, October 14, 2005**.

### **PARKING, ACCESSIBILITY, AND SECURITY**

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

Due to enhanced security precautions at the Cal-EPA Headquarters Building, all visitors are required to register with security 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 from three to fifteen minutes. Please allow adequate time to sign in before being directed to your meeting.

### **IF YOU HAVE ANY QUESTIONS**

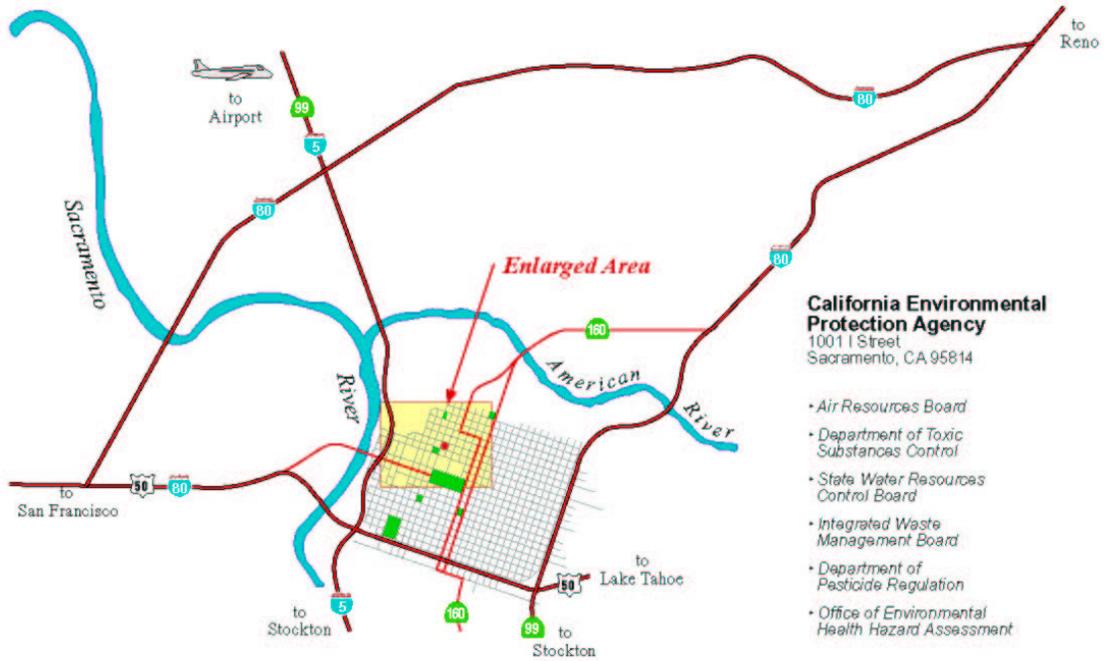
During the pendency of this proceeding and commencing no later than the issuance of this notice, there shall be no *ex parte* communications between State Water Board members or State Water Board hearing team staff and any of the other participants regarding substantive or controversial procedural matters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

*ORIGINAL SIGNED BY CELESTE CANTÚ for*  
Debbie Irvin  
Clerk to the Board

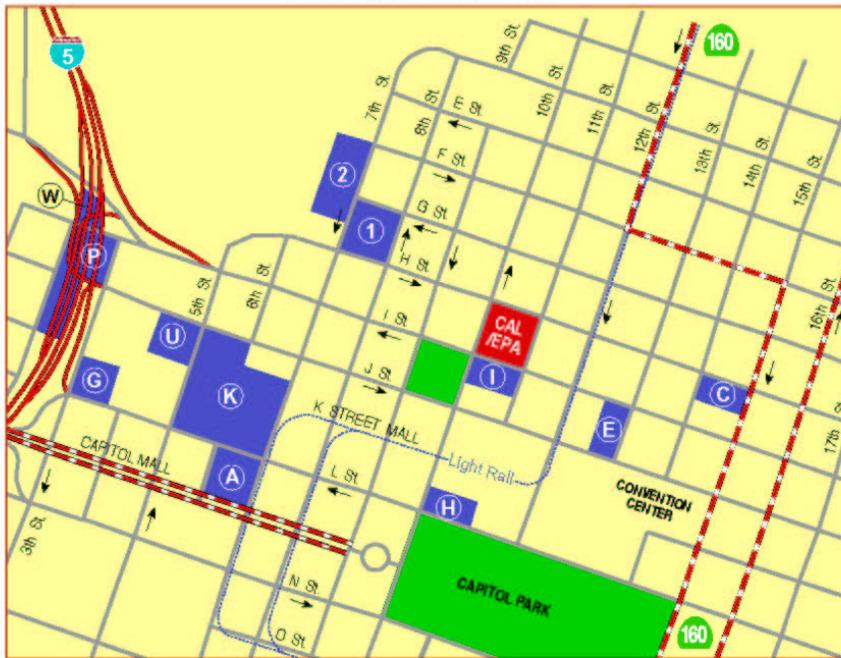
Date: September 23, 2005

Enclosures

# Enclosure 1



## 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.)

## 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 Board is available upon request or may be viewed at the State Water Board's web site: [http://www.waterboards.ca.gov/water\\_laws/index.html](http://www.waterboards.ca.gov/water_laws/index.html).

Each party has the right to call and examine witnesses, introduce exhibits, cross-examine opposing witnesses on any matter relevant to the issues even if that matter was not covered in the direct examination, impeach any witness, rebut adverse evidence, and subpoena, call and examine an adverse party or witness as if under cross-examination. The hearing officers 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 parties to respond, the hearing officers 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 to the hearing involving the Cease and Desist Order are the United States Bureau of Reclamation (USBR), the Department of Water Resources (DWR), and the Division of Water Rights' Prosecutorial Team, and any other persons or entities authorized by the hearing officers to participate in the hearing as parties. The parties to the hearing involving the Petitions for Reconsideration of the Water Quality Response Plan are the USBR, the DWR, Contra Costa Water District, South Delta Water Agency, Central Delta Water Agency, Westside Irrigation District, and any other persons or entities authorized by the hearing officers to participate in the hearing as parties. Only parties and other participants who are authorized by the hearing officers will be allowed to present evidence. A person or entity that appears and presents only a policy statement will not be allowed to participate in other parts of the hearing. The rules for policy statements are discussed below.
3. **NOTICE OF INTENT TO APPEAR:** Participants in this hearing must file two copies of a Notice of Intent to Appear, which must be **received** by the State Water Board no later than **noon on Friday, September 30, 2005**. 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. If you have already submitted a Notice of Intent to Appear and your witness list will not change as a result of adding the additional hearing topic related to the Petitions for Reconsideration of the Water Quality Response Plan, you need not submit another Notice of

Intent to Appear. If you have already submitted a Notice of Intent to Appear but your witness list will change as a result of adding the additional hearing topic, you should submit a revised Notice of Intent to Appear by the required date. Any revised Notice of Intent to Appear should be clearly marked “REVISED” at the top of the notice and should include a list of all witnesses for both hearing topics indicating the hearing topic about which each witness will be testifying.

The Notice of Intent to Appear must state: (1) the name and address of the participant, (2) the name of each witness who will testify on the participant’s behalf, (3) a brief description of the proposed testimony, and (4) an estimate of the time (not to exceed 20 minutes per hearing topic) that the witness will need to present a brief oral summary of the witness’ testimony. The witness’ testimony must be submitted in writing as described in Section 4 below. Participants who do not intend to present a case-in-chief but who may wish to cross-examine witnesses or present rebuttal should so indicate on the Notice of Intent to Appear. 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 Exhibit Identification Indexes 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 hearing party who has submitted a Notice of Intent to Appear. Hearing participants who intend to make only policy statements are not required to exchange information and will not receive testimony or exhibits from the parties. The service list will indicate which participants agreed to accept electronic service. No later than **noon on Friday, October 14, 2005**, each participant shall serve a copy of its Notice of Intent to Appear on each of the participants identified on the service list and shall also serve on the State Water Board and the participants on the service list a statement of service that indicates the manner of service. If there is any change in the hearing schedule, only those persons or entities that have filed a Notice of Intent to Appear will be informed of the change.

4. **WRITTEN TESTIMONY AND OTHER EXHIBITS:** Exhibits include written testimony, statements of qualifications of expert witnesses, and other documents to be used as evidence. Each participant proposing to present testimony on factual or other evidentiary

matters at the hearing shall submit such testimony in writing.<sup>1</sup> Written testimony shall be designated as an exhibit, and must be submitted with the other exhibits. Oral testimony that goes beyond the scope of the written testimony may be excluded. A participant who proposes to offer expert testimony must submit an exhibit containing a statement of the expert witness's qualifications.

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

With its exhibits, each participant must submit to the 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 by **noon on Friday, October 14, 2005**, and served on the other participants on or before that date.

The following requirements apply to exhibits:

- a. Exhibits based on technical studies or models shall be accompanied by sufficient information to clearly identify and explain the logic, assumptions, development, and operation of the studies or models.
- b. The hearing officers 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

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<sup>1</sup> The hearing officers 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 alternate arrangement. In such a case, the hearing officers may allow presentation of the oral direct testimony without requiring written testimony.

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 2000 software.
  - d. Exhibits that rely on unpublished technical documents will be excluded unless the unpublished technical documents are admitted as exhibits.
5. **ELECTRONIC SUBMISSIONS:** Participants are encouraged to submit the following documents to the 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 officers specify otherwise.

Any documents submitted or served electronically must be in Adobe™ Portable Document Format (PDF), except for Exhibit Identification Indexes, which must be in a version supported by Microsoft Excel 2000 (preferred) or Word 2000. Electronic submittals to the State Water Board of documents less than 5 megabytes in size may be sent via electronic mail to: [WrHearing@waterboards.ca.gov](mailto:WrHearing@waterboards.ca.gov) with a subject of “Delta Salinity Draft CDOs and WQRP Hearing”. Electronic submittals to the State Water Board of documents greater than 5 megabytes in size should be sent by regular mail in PDF format on compact disk (CD™) media. Electronic service on participants shall be in the same format as submittals to the 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>.

6. **ORDER OF PROCEEDING:** The State Water Board members serving as hearing officers will follow the Order of Proceedings specified in California Code of Regulations, title 23, section 648.5. Participants should take note of the following additional information regarding the major hearing events.

- a. **Policy Statements:** Pursuant to California Code of Regulations, title 23, section 648.1, subdivision (d), the State Water Board 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 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 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 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 officers.
- 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 officers may allow redirect examination and recross examination. The hearing officers 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 per hearing topic to summarize or emphasize their written testimony on direct examination.<sup>2</sup> Each

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<sup>2</sup> The hearing officers 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 officers is satisfied that the participant could not produce written direct testimony for the witness.

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 officers have 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 officers 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, a hearing officer may allow oral arguments or set a schedule for filing briefs or closing statements. If a hearing officer authorizes the participants to file briefs, six 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.
- 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

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<sup>3</sup> The hearing officers 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.

that can be folded to 8 ½ x 11 inches. Alternatively, participants may supply, for the hearing record, a reduced copy of a large format original if it is readable.

7. **EX PARTE CONTACTS:** During the pendency of this proceeding, commencing no later than the issuance of the Notice of Hearing, there shall be no *ex parte* communications between either State Water Board members or State Water Board hearing team staff and any of the other participants regarding substantive 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 the State Water Board staff attorney on the hearing team, not State Water Board members. (Gov. Code, § 11430.20, subd. (b).) A memorandum regarding *ex parte* communications is available upon request or from our website at [http://www.waterboards.ca.gov/water\\_laws/index.html](http://www.waterboards.ca.gov/water_laws/index.html)
8. **RULES OF EVIDENCE:** Evidence will be admitted in accordance with Government Code section 11513. Hearsay evidence may be used to supplement or explain other evidence, but over timely objection shall not be sufficient in itself to support a finding unless it would be admissible over objection in a civil action.
9. **SUBMITTALS TO THE STATE 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  
P.O. Box 2000, Sacramento, CA 95812-2000  
Attn: Jean McCue  
**Phone: (916) 341-5351**  
**Fax: (916) 341-5400**  
**Email: [WrHearing@waterboards.ca.gov](mailto:WrHearing@waterboards.ca.gov)**  
**With Subject of “Delta Salinity Draft CDOs and WQRP Hearing”**

**NOTICE OF INTENT TO APPEAR**

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

Delta Salinity Draft CDOs and WQRP, Sacramento and San Joaquin Rivers and Delta  
Scheduled for  
October 24 and 25, 2005

***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 Address: \_\_\_\_\_

