



Linda S. Adams
Secretary for
Environmental Protection

State Water Resources Control Board



Arnold Schwarzenegger
Governor

Division of Water Rights
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NOTICE OF PUBLIC HEARING

The State Water Resources Control Board will hold a Public Hearing on
Water Right Application 30166 of El Sur Ranch

Big Sur River in Monterey County

The Hearing will commence on
Tuesday, March 8, 2011, at 9:00 a.m.
and continue, if necessary, on
Wednesday, March 9, 2011, at 9:00 a.m.
in the
Coastal Hearing Room
Joe Serna, Jr. Cal/EPA Building
1001 I Street, Second Floor
Sacramento, CA

PURPOSE OF HEARING

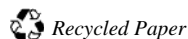
The purpose of this hearing is to receive evidence to assist the State Water Resources Control Board (State Water Board or Board) in determining whether it should approve, subject to terms and conditions, Application 30166 submitted by James J. Hill III for El Sur Ranch (Ranch). In addition, the State Water Board will consider whether to subordinate the priority of the Ranch's Application 30166 to Application 30946, which is held by Clear Ridge Mutual Water Association (Clear Ridge) for domestic use. (Wat. Code, §§ 106, 1253.) The Ranch proposes to appropriate water from the Big Sur River in Monterey County.

BACKGROUND - EL SUR RANCH

Project Description

In July 1992, the Ranch filed Application 30166 with the State Water Board's Division of Water Rights (Division) for the appropriation of water from the subterranean flow of the Big Sur River to maintain irrigated pasture on the Ranch. The Ranch amended the application in November and December 2005, and again in October 2006. The Ranch's current application is for an annual maximum of 1,615 acre-feet, a maximum 20-year rolling average of 1,200 acre-feet per year, a seasonal limit of 735 acre-feet from July through October, and a monthly limit (July to October) of 230 acre-feet at a rate not to exceed 5.84 cubic feet per second (cfs). The place of use is 267 acres net within a gross of 292 acres. The points of diversion are two wells located within Andrew Molera State Park adjacent to the Big Sur River.

California Environmental Protection Agency



Project History

El Sur Ranch is a working cattle operation located on the Pacific coast in Monterey County, approximately 25 miles south of Monterey. The Ranch is located west of Highway 1 adjacent to Andrew Molera State Park and has been in operation at this location for more than 150 years. Water used to irrigate the pastures is pumped from two wells within Andrew Molera State Park, on land originally deeded to the State Parks system from the Ranch. One of the wells (the Old Well) has been in operation since 1949, while the other well (the New Well), was put into operation in 1984.

In August 1990, the California Department of Parks and Recreation (DPR) filed a complaint with the Division alleging that excessive use of water by the Ranch results in impacts to public trust resources within the Big Sur River watershed. The DPR's complaint alleged that the water source for the Ranch's wells, which the Ranch previously believed to be percolating groundwater, is actually subterranean river flow subject to the State Water Board's permitting authority. The complaint claimed that the Ranch's pumping had dried up reaches of the Big Sur River, thus potentially causing both short- and long-term impacts to public trust resources. The complaint specifically alleged short-term impacts due to the loss of fresh water in both the river and lagoon and potential long-term impacts resulting from saltwater intrusion and degradation to fish habitat.

In April 1992, the Division issued a report documenting a staff investigation in response to DPR's complaint. The report concluded that the source of water for the two wells was a subterranean stream rather than percolating groundwater. The Division concluded that based on the terms of the deed of the Molera Parcel, that the Ranch possessed a valid riparian right to use the wells to divert water to a portion of the Ranch. Under a riparian right, water cannot be diverted outside of the watershed or conveyed to parcels of land not contiguous to, or not abutting, the watercourse. When the Ranch amended its application in November 2005, it identified the riparian portion of its land as 25 acres. In its 1992 letter report, the Division recommended that the Ranch either cease diversions of water that serve non-riparian land, or alternatively, apply for an appropriative water right that would serve the non-riparian land.

In July 1992, the Ranch filed water right Application 30166 with the Division and in May 1994, the Division issued a public notice of the application.

Protests

DPR, the California Department of Fish and Game (DFG), and the California Sportfishing Protection Alliance (CSPA) submitted timely protests against the application based on alleged injuries to public trust resources. These protests are based on the possible effects of groundwater pumping on the Big Sur River. The alleged effects included reduced river flows and corresponding lowered water levels in the river, saltwater intrusion, and the resulting potential impacts to riparian flora and fauna, especially special-status species (including steelhead, California red-legged frog, and southwestern pond turtle). Additionally, DPR's protest asserted that the quantity of water that the Ranch sought to divert for irrigation was excessive for its intended purpose, citing erosion effects due to irrigation runoff.

Environmental Documentation

The State Water Board is the lead agency for the application under the California Environmental Quality Act (CEQA), and has prepared and circulated for public review a Draft Environmental Impact Report (DEIR) for the project. The State Water Board circulated the DEIR through the State Clearinghouse (SCH) for public review in October 2009, under SCH Identification Number 2006061011. The Division in December 2009 received comments on the DEIR. The State Water Board will certify a final EIR prior to any approval of the proposed project.

Instream Flow Assessment Activities

On June 2, 2010, DFG issued a letter indicating that they will conduct instream flow study activities on the Big Sur River starting in the summer of 2010. The goal of the investigation is to characterize steelhead habitat as a function of flow in the river. Development of habitat and flow relationships will allow DFG to identify flow requirements needed to protect steelhead in the Big Sur River. DFG intends to develop stream flow recommendations and provide them to the State Water Board for consideration as set forth in section 1257.5 of the Water Code. DFG anticipates the study and recommendations will be completed by the end of 2012.

BACKGROUND - CLEAR RIDGE MUTUAL WATER ASSOCIATION

Project Description

Clear Ridge serves 42 properties located on Pfeiffer Ridge and Clear Ridge in the Big Sur area of Monterey County. Clear Ridge's source of water is a 36-foot deep well situated approximately 45 feet from the southwest bank of the Big Sur River. In May 1998, the Division received a complaint against Clear Ridge. The Division reviewed the complaint and determined that the Clear Ridge well is diverting water from the subterranean flow of the Big Sur River, thus requiring Clear Ridge to file a water right application. On September 17, 1999, Clear Ridge filed Application 30946 with the Division and on June 9, 2000, a public notice was published for the application. On December 6, 2010, the Division issued Division Decision 2010-02 approving Application 30946 (Permit 21272).

Pursuant to Application 30946, Clear Ridge has a right to appropriate up to 42 acre-feet per year at a rate not to exceed a maximum instantaneous rate of 0.058 cfs, during the season from January 1 through December 31, from the subterranean stream portion of the Big Sur River. The purposes of use are domestic and fire protection. The place of use is Clear Ridge's service area, which is both within and outside the watershed area of the Big Sur River. The water appropriation system, which has been in operation since 1972, currently serves 38 residences. Up to four new residences could be added, and the system could serve property upgrades. The State Water Board reserves jurisdiction (i) to modify, delete, or add minimum flow requirements if additional fishery studies are conducted and (ii) to modify, delete, add, or otherwise coordinate minimum flow requirements or related criteria for the protection of fish and wildlife in the Big Sur River as necessary to accommodate downstream senior water rights, such as the Ranch's.

In a letter dated September 17, 2010, Clear Ridge requested that the Division consider granting Clear Ridge's application priority over El Sur Ranch's application. Clear Ridge states that the California Water Code provides for domestic water use as the highest beneficial use of water, higher than use for agricultural and crop irrigation, which is the intended use of water under El Sur Ranch's application.

KEY ISSUES

1. Is water available for appropriation under the application? If so, when is water available and under what circumstances, taking into consideration prior rights? What terms and conditions, if any, should the State Water Board adopt to protect prior rights?
2. Will approval of the application result in any significant adverse impacts to water quality, the environment, or public trust resources? What terms and conditions, if any, should the State Water Board adopt to avoid or mitigate any such potential adverse impacts?

3. Will the water be put to reasonable and beneficial use? Is the proposed appropriation in the public interest? If the State Water Board approves the application, what terms and conditions, if any, should the board adopt to ensure that the diversions are in accordance with applicable law and best serve the public interest? What terms and conditions, if any, should the State Water Board adopt to prevent the waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of water?
4. Should the State Water Board subordinate the priority of the Ranch's Application 30166 to Clear Ridge's Application 30946? Would reversal of priority be in keeping with state policy regarding domestic use and serve the public interest?

HEARING OFFICERS AND HEARING TEAM

State Water Board Chairman Charles Hoppin and Member Tam Doduc will preside as hearing officers over this proceeding. Other members of the Board may be present during the hearing. State Water Board staff hearing team members will include Erin Mahaney, Senior Staff Counsel, Paul Murphey, Engineering Geologist, and Jane Farwell, Environmental Scientist. The hearing team will assist the hearing officers and other members of the State Water Board throughout this proceeding.

HEARING PARTICIPATION

IF YOU WANT TO TAKE PART IN THE EVIDENTIARY HEARING, you should carefully read the enclosure entitled "Water Right Hearings Information." As stated in that enclosure, everyone wishing to present evidence at the hearing must submit a **Notice of Intent to Appear**, which must be **received** by the State Water Board no later than the deadline listed below.

Within one week after the deadline for Notices of Intent to Appear, the State Water Board will mail out a list of those who have indicated a desire to participate in the hearing and a copy of all Notices of Intent to Appear that were timely received by the State Water Board. The list is provided in order to facilitate exchange of written testimony, exhibits, and witness qualifications in advance of the hearing. Except as provided by ruling of the hearing officers, only parties 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, Friday, January 14, 2011

Deadline for receipt of Notice of Intent to Appear.

12 Noon, Monday, February 7, 2011

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: Paul Murphey
P.O. Box 2000
Sacramento, CA 95812-2000

Phone: (916) 341-5435
Fax: (916) 341-5400

Email: wrhearing@waterboards.ca.gov
With Subject of "Big Sur River 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 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 Senior Staff Counsel Erin Mahaney at (916) 341-5187, or by email at emahaney@waterboards.ca.gov; or to Staff Engineering Geologist Paul Murphey at (916) 341-5435, or by email at pmurphey@waterboards.ca.gov.


PARKING, ACCESSIBILITY AND SECURITY

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

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

December 20, 2010

Date



Jeanine Townsend
Clerk to the Board

Enclosures

ATTACHMENT

WATER RIGHT HEARINGS INFORMATION

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

1. **HEARING PROCEDURES GENERALLY:** The hearing will be conducted in accordance with the procedures for hearings set forth at California Code of Regulations, title 23, sections 648-648.8, 649.6 and 760, as they currently exist or may be amended. A copy of the current regulations and the underlying statutes governing adjudicative proceedings before the State Water Board is available upon request or may be viewed at the State Water Board's web site: http://www.waterboards.ca.gov/laws_regulations.

Unless otherwise determined by the hearing officers, each party may make an opening statement, 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. At the discretion of the hearing officers, parties may also be afforded the opportunity to present closing statements or submit briefs. The State Water Board encourages parties with common interests to work together to make the hearing process more efficient. The hearing officers reserve the right to issue further rulings clarifying or limiting the rights of any party where authorized under applicable statutes and regulations.

Parties must file any requests for exceptions to procedural requirements in writing with the State Water Board and must serve such requests on the other parties. To provide time for 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. **SETTLEMENTS:** In water right enforcement hearings, a State Water Board staff member or team prosecutes an alleged violation. In such enforcement cases, the prosecution and a party who is the subject of the proposed enforcement action may at their discretion engage in private settlement discussions, or may include any other persons in those discussions. Although other persons may be authorized to participate in the hearing as parties, such a designation does not constitute a ruling that those persons must be allowed to engage in any settlement discussions between the prosecution and the party against whom the agency action is directed. The consent of other parties is not required before the State Water Board, or the Executive Director under State Water Board Resolution No. 2002-104, can approve a proposed settlement agreement between the prosecution and a party subject to a proposed enforcement action. However, all parties will be given the opportunity to comment on any settlement submitted to the State Water Board or the Executive Director for approval.

In non-enforcement hearings involving an unresolved protest between a protestant and a water right applicant or petitioner, those persons will be designated as parties in the hearing. (Cal. Code Regs., tit. 23, § 648.1, subd. (b).) Other persons who file a Notice of Intent to Appear in the hearing, may also be designated as parties. In such cases, the parties originally designated as parties may at their discretion meet privately to engage in settlement discussions, or may include other persons. If the original parties resolve the dispute, the hearing officers will determine whether or not to proceed with the hearing, after allowing all remaining parties the opportunity to comment on any proposed settlement.

3. **PARTIES:** The current parties to the hearing are **El Sur Ranch, the California Department of Fish and Game, the California Department of Parks and Recreation, and the California Sportfishing Protection Alliance.**

Additional parties may be designated in accordance with the procedures for this hearing. Except as may be decided by specific rulings of the hearing officers, any person or entity who timely files a Notice of Intent to Appear indicating the desire to participate beyond presenting a policy statement shall be designated as a party. The hearing officers may impose limitations on a party's participation. (Gov. Code, § 11440.50, subd. (c).) Persons or entities who do not file a timely Notice of Intent to Appear may be designated as parties at the discretion of the hearing officers, for good cause shown, and subject to appropriate conditions as determined by the hearing officers. Except as specifically provided in this notice or by ruling of the hearing officers, only parties will be allowed to present evidence.

4. **INTERESTED PERSONS:** 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 designated as parties. A person or entity that appears and presents only a policy statement is not a party and will not be allowed to make objections, offer evidence, conduct cross-examination, make legal argument or otherwise participate in the evidentiary hearing. Interested persons will not be added to the service list and will not receive copies of written testimony or exhibits from the parties, but may access hearing documents at the website listed in the hearing notice.

Policy statements are subject to the following provisions in addition to the requirements outlined in regulation. (Cal. Code Regs., tit. 23, § 648.1, subd. (d).)

- a. Policy statements are not subject to the pre-hearing requirements for testimony or exhibits, except that interested persons are requested to file a Notice of Intent to Appear, indicating clearly an intent to make a policy statement only.
- b. The State Water Board requests that policy statements be provided in writing before they are presented. Please see section 7 for details regarding electronic submittal of policy statements.

5. **NOTICE OF INTENT TO APPEAR:** Persons and entities who seek to participate as parties 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 in a timely manner may be interpreted by the State Water Board as intent not to appear. If the party requesting the hearing fails to file a timely Notice of Intent to Appear, this may be deemed a withdrawal of the request for hearing. Any faxed or emailed Notices of Intent to Appear must be followed by a mailed or delivered hard copy with an original signature.

Interested persons who will not be participating as parties, but instead presenting only non-evidentiary policy statements should also file a Notice of Intent to Appear.

The Notice of Intent to Appear must state the name and address of the participant. Except for interested persons who will not be participating as parties, the Notice of Intent to Appear must also include: (1) the name of each witness who will testify on the party's behalf; (2) a brief description of each witness's proposed testimony; and (3) an estimate of the time (not to exceed 20 minutes) that the witness will need to present a brief oral summary of his or her prior-submitted written testimony. (See section 6, below.) Parties 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.¹ Parties who decide not to present a case-in-chief or a witness after having submitted a Notice of Intent to Appear should notify the State Water Board and the other parties as soon as possible.

Parties who are not willing to accept electronic service of hearing documents should check the appropriate box on the Notice of Intent to Appear. (See section 7, below.)

The State Water Board will mail a service list of parties to all of the parties. The service list will indicate if any party declines to accept electronic service. If there is any change in the hearing schedule, only those parties on the service list, and interested persons that have filed a Notice of Intent to Appear expressing their intent to present a policy statement only, will be informed of the change.

6. **WRITTEN TESTIMONY AND OTHER EXHIBITS:** Exhibits include written testimony, statements of qualifications of expert witnesses, and other documents to be used as evidence. Each party proposing to present testimony on factual or other evidentiary matters at the hearing shall submit such testimony in writing.² 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 party who proposes to offer expert testimony must submit an exhibit containing a statement of the expert witness's qualifications.

¹ A party is not required to present evidence as part of a case-in-chief. Parties not presenting evidence as part of a case-in-chief will be allowed to participate through opening statements, cross-examination and rebuttal, and may also present closing statements or briefs, if the hearing officers allow these in the hearing.

² The hearing officers may make an exception to this rule if the witness is adverse to the party presenting the testimony and is willing to testify only in response to a subpoena or alternative arrangement.

Each party presenting a case-in-chief shall submit to the State Water Board 5 paper copies and one electronic copy of each of its exhibits. With its exhibits, each party must submit a completed Exhibit Identification Index. Each party shall also serve a copy of each exhibit and the exhibit index on every party on the service list. A statement of service with manner of service indicated shall be filed with each party's exhibits.

All submittals, including paper copies, and a statement of service **must be received by the State Water Board and served on the other parties no later than the deadline prescribed in the Hearing Notice.** The State Water Board may interpret failure to timely submit the documents as a waiver of the opportunity to present a case-in-chief.

All hearing documents that are timely received will be posted on the hearings program webpage identified in the hearing notice.

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 party offering an exhibit by reference shall advise the other parties and the State Water Board of the titles of the documents, the particular portions, including page and paragraph numbers, on which the party 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 party seeking to enter in evidence as an exhibit a voluminous document or database may so advise the other parties 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 party waives the opportunity to obtain a copy of the exhibit, the party sponsoring the exhibit will not be required to provide a copy to the waiving party. Additionally, with the permission of the hearing officers, such exhibits may be submitted to the State Water Board solely 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. Parties 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, parties may supply, for the hearing record, a reduced copy of a large format original if it is readable.

7. **ELECTRONIC SUBMISSIONS:** To expedite the exchange of information, reduce paper use, and lower the cost of participating in the hearing, participants are encouraged to submit hearing documents to the State Water Board in electronic form and parties are encouraged to agree to electronic service.

Any documents submitted or served electronically must be in Adobe Portable Document Format (PDF), except for Exhibit Identification Indexes, which may be in a format 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 “**Big Sur River Hearing.**” Electronic submittals to the State Water Board of documents greater than 11 megabytes in total size should be submitted on a compact disk (CD). Each electronically submitted exhibit must be saved as a separate PDF file, with the name in lower case lettering.

Electronic service on parties shall be in the same file format as submittals to the State Water Board, and should be submitted to the parties at the e-mail addresses provided on the Notices of Intent to Appear. Parties who do not opt out of 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 party who submitted the document, not to the State Water Board. Parties who receive such a request shall provide a paper copy of the requested document within five days of the date the request is received.

8. **ORDER OF PROCEEDING:** The 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. The time limits specified below may be changed by the hearing officers, for good cause.
 - a. **Policy Statements Within the Evidentiary Hearing:** Policy statements will be heard at the start of the hearing, before the presentation of cases-in-chief. Oral summaries of the policy statements will be limited to five minutes.
 - b. **Presentation of Cases-In-Chief:** Each party who so indicates on a Notice of Intent to Appear 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, oral testimony, introduction of exhibits, and cross-examination of the party’s witnesses. The hearing officers may allow redirect examination and recross examination. The hearing officers will decide whether to accept the party’s exhibits into evidence upon a motion of the party after completion of the case-in-chief.
 - i. **Opening Statements:** At the beginning of a case-in-chief, the party or the party’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 party. A party may submit a written opening statement before the hearing or during the hearing, prior to their case-in-chief. Any policy-oriented statements by a party should be included in the 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. Each party 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 not covered in the direct testimony. (Gov. Code, § 11513, subd. (b).) If a party presents multiple witnesses, the hearing officers will decide whether the party'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. Ordinarily, only a party or the party's representative will be permitted to examine a witness, but the hearing officers may allow a party to designate a person technically qualified in the subject being considered to examine a witness.
 - iv. **Redirect and Recross Examination:** Redirect examination may be allowed at the discretion of the hearing officers. Any redirect examination and recross examination permitted will be limited to the scope of the cross-examination and the redirect examination, respectively. The hearing officers may establish time limits for any permitted redirect and recross examination.
 - v. **Questions by State Water Board and Staff:** State Water Board members and the hearing team may ask questions at any time and may cross-examine any witness.
- c. **Rebuttal:** After all parties have presented their cases-in-chief and their witnesses have been cross-examined, the hearing officers will allow parties to present rebuttal evidence. Rebuttal evidence is new evidence used to rebut evidence presented by another party. Rebuttal testimony and exhibits need not be submitted prior to the hearing, although the hearing officers may require submittal of rebuttal testimony and exhibits before they are presented in order to improve hearing efficiency. Rebuttal evidence is limited to evidence that is responsive to evidence presented in connection with another party's case-in-chief, and it does not include evidence that should have been presented during the case-in-chief of the party submitting rebuttal evidence. It also does not include repetitive evidence. Cross-examination of rebuttal evidence will be limited to the scope of the rebuttal evidence.

³ The hearing officers may, for good cause, approve a party's request for additional time to present direct testimony during the party's case-in-chief. The hearing officers may allow additional time of the oral direct testimony of the witness if the witness is adverse to the party presenting the testimony and the hearing officers are satisfied that the party could not produce written direct testimony for the witness.

- d. **Closing Statements and Legal Arguments:** At the close of the hearing or at other times if appropriate, the hearing officers may allow oral closing statements or legal arguments or set a schedule for filing legal briefs or written closing statements. If the hearing officers authorize the parties to file briefs, five copies of each brief shall be submitted to the State Water Board, and one copy shall be served on each of the other participants on the service list. A party shall not attach a document of an evidentiary nature to a brief unless the document is already in the evidentiary hearing record or is the subject of an offer into evidence made at the hearing.
9. **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 with the State Water Board members or the State Water Board hearing team regarding substantive or controversial procedural issues within the scope of the proceeding. (Gov. Code, §§ 11430.10-11430.80.) **Any communications regarding potentially substantive or controversial procedural matters, including but not limited to the submission of evidence, briefs, and motions, must demonstrate that all parties were served and the manner of service.** Parties may accomplish this by submitting a proof of service or by other verification, such as correct addresses in an electronic-mail carbon copy list, or a list of the parties copied and their addresses in the carbon copy portion of a letter. 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.
10. **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 interested person)

Big Sur River Hearing

**scheduled to commence
Tuesday, March 8, 2011**

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 decline electronic service.
- 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: _____

