

PRE-HEARING CONFERENCE
STATE OF CALIFORNIA
WATER RESOURCES CONTROL BOARD
DIVISION OF WATER RIGHTS

In the Matter of:)

THE PROPOSED CEASE AND DESIST)
ORDER AGAINST CALIFORNIA AMERICAN)
WATER FOR THE UNAUTHORIZED DIVERSION)
OF WATER FROM THE CARMEL RIVER IN)
MONTEREY COUNTY.)

JOE SERNA JR./CALEPA BUILDING
1001 I STREET
SIERRA HEARING ROOM
SACRAMENTO, CALIFORNIA

WEDNESDAY, MARCH 19, 2008

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ORIGINAL

JAMES F. PETERS, CSR, RPR
CERTIFIED SHORTHAND REPORTER
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1 So from the State Water Resources Control Board
2 prosecution team, Reed --

3 OFFICE OF ENFORCEMENT DIRECTOR SATO: This is
4 Reed Sato.

5 BOARD MEMBER BAGGETT: California American Water
6 Company

7 MR. RUBIN: Morning, Hearing Officer Baggett.
8 John Rubin for California American Water.

9 BOARD MEMBER BAGGETT: And then I have a number
10 of interested persons. And I don't know if now is the
11 appropriate time. I think there might -- this list goes
12 on. If you plan on being a party to cross examine
13 witnesses, to present evidence, we require notice of
14 intent. If you just want to make a policy statement or a
15 public statement, generally you don't have to file a
16 notice of intent. We'll have that hearing in Carmel on
17 the 1st where the public who wants to just make comments
18 of a general nature is welcome to make those. They won't
19 be as evidence.

20 So if you are an interested person that intends
21 to be a party to the proceeding, maybe you could identify
22 that at this time, because normally we've had a lot of
23 parties but not 20 usually.

24 MR. LOWERY: Mr. Baggett, this is Lloyd Lower for
25 the Monterey County Hospitality Association. Bob McKenzie

1 is also on the line. And a notice of intent to appear has
2 been submitted. Some of the people who have been
3 designated on that as expert witnesses probably aren't.
4 And I wanted to find out what would be the appropriate way
5 to change that.

6 BOARD MEMBER BAGGETT: Okay. Let me read down
7 the list. And I think most of you on the phone have
8 already -- I've got your party here. So then we can get
9 to it that way. So first I have the Monterey Peninsula
10 Water Management District.

11 MR. LAREDO: Mr. Baggett, this is David Laredo on
12 the phone. The District has filed a notice of intent to
13 appear and does intend to participate as a full party and
14 has witnesses that it plans to call and wishes to cross
15 examine.

16 BOARD MEMBER BAGGETT: Very good. Thank you.
17 City of Carmel.

18 MR. FREEMAN: Hi Don Freeman on behalf of the
19 City of Carmel-By-The-Sea and we did file a notice of
20 intent to appear and we do wish to call witnesses.

21 BOARD MEMBER BAGGETT: Very good. Thank you.
22 City of Seaside.

23 MR. MCGLOTHLIN: This is Russ McGlothlin and we
24 would --

25 MR. LAREDO: Mr. Baggett, we could not hear what

1 that response was if there was a response?

2 BOARD MEMBER BAGGETT: Why don't we put the mic
3 -- there's a button the mic there.

4 Maybe we could go back.

5 Carmel.

6 MR. FREEMAN: Don Freeman representing the City
7 of Carmel-By-The-Sea. And we did file a notice of intent
8 and we do intend to call parties.

9 BOARD MEMBER BAGGETT: Very good.

10 City of Seaside.

11 MR. MCGLOTHLIN: Russ McGlothlin representing the
12 City of Seaside. The same, full party status, calling
13 witnesses.

14 BOARD MEMBER BAGGETT: And the Seaside Basin
15 Watermaster.

16 MR. MCGLOTHLIN: Again Russ McGlothlin
17 representing the Seaside Basin Watermaster, full party
18 status, calling witnesses. City of Sand City?

19 MR. HEISINGER: James Heisinger representing Sand
20 City, full party status.

21 BOARD MEMBER BAGGETT. Pebble Beach Company?

22 MR. JAMISON: Mr. Baggett, I'm Thomas Jamison
23 representing the Pebble Beach Company. And Pebble Beach
24 Company has filed a notice of intent and intends to
25 participate in full party status.

1 BOARD MEMBER BAGGETT: Very goo.

2 Monterey County Hospitality Association.

3 MR. LOWERY: Lloyd Lowery appearing and we have
4 filed a notice of intent to appear as a full party.

5 BOARD MEMBER BAGGETT: Jonas Minton or Planning
6 and Conservation League, question mark.

7 MR. MINTON: This is Jonas Minton with the
8 Planning and Conversation League, representing the
9 Planning and Conservation League. We filed a notice of
10 intent to appear and intend to participate as a full
11 party.

12 BOARD MEMBER BAGGETT: Very good. Thank you.

13 National Marine Fisheries?

14 National Marine Fisheries?

15 Going twice?

16 Sierra Club, Ventura Chapter.

17 MR. SILVER: I'm Larry Silver representing Sierra
18 Club, Ventura Chapter, which was the original complainant
19 in this proceeding. And I would like to make a statement
20 this morning concerning hearing procedures.

21 BOARD MEMBER BAGGETT: Okay. You'll have your
22 opportunity in a minute.

23 MR. LAREDO: May I ask a question of
24 clarification? Was that the Ventura Chapter or the
25 Ventana Chapter?

1 MR. SILVER: I'm sorry. I represent Sierra Club.
2 And the chapter is the Ventana Chapter.

3 BOARD MEMBER BAGGETT: Could you identify
4 yourself if you're on the phone for the court reporter.

5 MR. LAREDO: Thank you. I'm sorry. That was
6 David Laredo for the Monterey Peninsula Water Management
7 District.

8 BOARD MEMBER BAGGETT: Thank you

9 MR. SILVER: I do want to be clear that basically
10 the National Sierra Club is participating in these
11 proceedings as a full party with rights of cross
12 examination and present witnesses.

13 BOARD MEMBER BAGGETT: Very good. Great.
14 Carmel River Steelhead Association.

15 MR. JACKSON: Michael Jackson appearing for the
16 Carmel River Steelhead Association. We have filed a
17 notice of intent to appear. We do intend to appear and be
18 a full party.

19 BOARD MEMBER BAGGETT: And California
20 Sportfishing Alliance.

21 MR. JACKSON: Same thing. Mike Jackson appearing
22 for the California Sportfishing Protection Alliance. We
23 intend to be a full party and avail ourselves of cross
24 examination.

25 BOARD MEMBER BAGGETT: Very good. California

1 Salmon and Steelhead Association

2 MR. BAIOCCHI: Bob Baiocchi. I'm their executive
3 director. We plan on being a full party. We filed an
4 NOI.

5 BOARD MEMBER BAGGETT: Very good. Thank you.
6 Public Trust Alliance?

7 MR. WARBURTON: Michael Warburton and Pat
8 Nelson --

9 BOARD MEMBER BAGGETT: Could you come up to the
10 mic. I think that would be helpful Michael

11 MR. WARBURTON: Michael Warburton and Pat
12 Nelson --

13 BOARD MEMBER BAGGETT: There's a button.

14 MR. WARBURTON: Michael Warburton and Pat Nelson
15 for the Public Trust Alliance and we will be participating
16 as a full party.

17 BOARD MEMBER BAGGETT: Very good.
18 Thank you.

19 MR. LAREDO: Could you repeat that. That did not
20 pickup so we could hear that by phone.

21 MR. WARBURTON: It was Michael Warburton and Pat
22 Nelson appearing for the Public Trust Alliance as a full
23 party.

24 BOARD MEMBER BAGGETT: Thank you. I have other
25 parties. The Public Utility, Commission Ratepayers.

1 MR. ULMER: Good morning. Thank you.

2 Good Morning. My name is Andrew Ulmer. I'm
3 actually Chief Counsel for something called the Division
4 of Ratepayer Advocates. I'm actually not a representative
5 of the Public Utilities Commission. The Division of
6 Ratepayer Advocates is an independent arm of the PUC
7 that's created by the Legislature, has a director that's
8 been appointed by the Governor. We've got a statutory
9 mandate to advocate for the lowest possible utility rates,
10 consistent with safe and reliable service.

11 We did submit a notice of intent to appear, but
12 we intend to limit our participation solely to present a
13 written policy statement and we will also make an oral
14 presentation or intend to at the April 1st public
15 participation hearing.

16 BOARD MEMBER BAGGETT: Very good. We'll talk
17 about that in a minute, I think, about the difference
18 between those proceedings. And then you can
19 decide -- well, might as well talk about it now.

20 If you're a party, we normally -- at least, it's
21 my policy, not to allow parties to do policy statements,
22 because if you're a full party, you get to do an opening
23 statement. And if you're going to do an opening
24 statement, that's your opportunity at the proceeding
25 itself to make whatever case you want to make.

1 Policy statements are non-evidentiary in nature
2 and they're limited to 3 minutes. It's usually maybe some
3 of the ratepayers will probably, I assume, show up and
4 make some policy -- some public statements on the 1st.
5 But if you want to be a party to the hearing, then you'll
6 get your opportunity there. And I would just for
7 efficiency and the lack of confusion, it's cleaner if --
8 it's more straightforward for you to make an opening
9 statement in the proceeding itself, if you intend to be a
10 party. That's my preference.

11 MR. ULMER: Okay. And we'll definitely take that
12 under consideration. And with that said, I mean I'd like
13 to reserve the opportunity to make such an opening
14 statement. Our intent here is really to provide, we hope,
15 some helpful background about what the draft cease and
16 desist order may mean for some dialogues that have been
17 ongoing on the Monterey peninsula with respect to regional
18 water supply planning, as well as potential impacts on
19 ratepayers of Cal Am.

20 BOARD MEMBER BAGGETT: Very good. And that -- I
21 mean, at least from a perspective as I think for us as
22 hearing officers and for our staff, that would be helpful
23 to have part of the record of the hearing not as a policy
24 statement, because that's -- I think will go directly to
25 the nature of these proceedings and it would be helpful if

1 that was part of the hearing from my perspective.

2 MR. ULMER: And just to clarify, that could be
3 made as part of an opening statement in the formal
4 evidentiary process? And with that said, I don't
5 anticipate needing the opportunity to cross examine
6 witnesses.

7 BOARD MEMBER BAGGETT: Okay. Very good.

8 Thank you.

9 California Department of Fish and Game?

10 Department of Fish and Game?

11 City of Monterey?

12 And I have one blue card, Larry Silver from the
13 Sierra Club.

14 MR. SILVER: Yes. I just filled that out.

15 BOARD MEMBER BAGGETT: Oh, you filled that out.

16 MR. SILVER: We did file a notice of intent to
17 appear.

18 MR. RUBIN: Hearing Officer Baggett, before you
19 make a decision, I presume, on the status of parties, I
20 would like to talk about 2 issues. One is the scope of
21 the proceeding. It's --

22 MR. LAREDO: Could you identify yourself, please.

23 MR. RUBIN: I'm sorry, this is Jon Rubin for
24 California American Water.

25 BOARD MEMBER BAGGETT: Is you mic on?

1 MR. RUBIN: It is on.

2 MR. LAREDO: Thank you.

3 MR. RUBIN: Jon Rubin for California American
4 Water.

5 We'd like to talk about the scope of the
6 proceeding. And once we get through that, I would like to
7 have the opportunity to potentially raise a few more
8 issues.

9 BOARD MEMBER BAGGETT: Very good. Let me go
10 through the rest of the opening statement here and then I
11 likewise have couple of issue us that probably aren't in
12 here and that we need to talk about.

13 So the purpose of this pre-hearing is to discuss
14 the conduct of a hearing scheduled for Thursday June 19th.
15 This pre-hearing conference is not for the purpose of
16 presenting evidence or arguments in support or of
17 opposition to the proposed cease and desist order.

18 After addressing a few general comments, I will
19 ask each person filing notice of intent if there are
20 matters they wish to bring to the attention of the Board.
21 So we'll get there in a minute.

22 A cursory review of the notice of intent to
23 appear leads me to suspect that much of the testimony that
24 may be offered may be repetitive. If the submissions of
25 written testimony confirms that, I may limit the parties

1 offering such testimony to the full time indicated in
2 their notice. We're going to try to make this efficient
3 and not, as the notice says, 20 minutes. We might limit
4 that if we see that it's going to be the same evidence
5 presented 6 times or 8 times.

6 Likewise, I would encourage parties of like
7 interests to maybe coordinate their cases. I guess from
8 my experience, 9 years here, where that was very effective
9 for, I think, the Board and for the hearing team was on
10 the Imperial Irrigation District Water transfer, where we
11 had, I think, what 14 parties.

12 And it was very helpful, particularly the
13 environmental community, had 7 or 8 parties. And they
14 worked -- it actually was more efficient, quite frankly,
15 and they could bring more expert witnesses in and focus on
16 different pieces. And they coordinated their case and it
17 was very helpful. I would suggest that if that's
18 possible. If not, you have the opportunity, it's your
19 time, and make the case. But I think efficiency would
20 benefit all of us.

21 Fishery testimony. On order number water right
22 Order 95-10 makes many explicit findings concerning the
23 fishery and Steelhead resources of the Carmel River and
24 the impact of the diversion by the Cal American Water
25 Company on these resources. These findings are res

1 judicata as to California American Water Company, the
2 Carmel River Steelhead Association and the Ventana Chapter
3 of the Sierra Club.

4 Testimony addressing the effects of the Cal
5 American Water's continued diversion on the fishery of
6 this river may be of assistance to the Board.

7 The issues and procedures for the hearing are
8 described in detail in the February 28th, 2008 hearing
9 notice. We want to provide an opportunity for any
10 questions or discussion regarding those matters and
11 procedures set forth in the notice. If there are any
12 stipulations that would further expedite the hearing,
13 please let us know. In order to ensure that we hear from
14 everyone, I'll call on those who have made appearances
15 first. And we'll use the same order as we previously have
16 this morning.

17 If anyone wishes to respond or comment on another
18 party's comments, please let me know and we'll call on you
19 at the appropriate time.

20 So with that, we'll start out -- I'll just go
21 down the list and see if -- I think it's going to be a lot
22 faster.

23 Mr. Sato.

24 OFFICE OF ENFORCEMENT DIRECTOR SATO: Mr.
25 Baggett, one thing I just wanted to -- I noticed that some

1 people had -- it sounded like they were just appearing on
2 the phone -- excuse me just joining us and they may not
3 have identified themselves. And so there may be some of
4 the people who filed notices of intent that you called
5 previously who didn't respond and maybe they are on now.
6 So I just raise that as procedural issue.

7 BOARD MEMBER BAGGETT: Well, the only 2 that I
8 have that didn't respond were, what, Fish and Game -- is
9 Fish and Game on the phone?

10 And the City of Monterey were the 2 that did not
11 respond.

12 MR. RUBIN: I believe NOAA Fisheries as well.

13 BOARD MEMBER BAGGETT: And National Marine
14 Fisheries.

15 MR. KEIFER: Yes, Mr. Baggett. This is Chris
16 Keifer with NOAA's Office of General Counsel. I am on the
17 phone now. And the National Marine Fisheries Service is
18 here.

19 MR. MOELLER: And this is Neil Moeller also with
20 the NOAA Office of General Counsel in Seattle and I just
21 joined.

22 BOARD MEMBER BAGGETT: Very good. Thank you.

23 OFFICE OF ENFORCEMENT DIRECTOR SATO: Mr.
24 Baggett, I mean one of the issues that I think have jumped
25 out at as in terms of the possibilities for trying to

1 address some of these matter through some type of summary
2 adjudication proceeding. It seems to us that --

3 MR. LAREDO: May I ask that you identify
4 yourself. This is David Laredo, but I don't who's
5 speaking.

6 OFFICE OF ENFORCEMENT DIRECTOR SATO: I thought
7 they identified me. This is Reed Sato with the Water
8 Rights prosecution team.

9 You know looking at the request for hearing filed
10 by Cal American Water, it seems to me that they're trying
11 to raise the issue that somehow the existence of -- or
12 their efforts with regard to 95-10 -- if they're in
13 compliance with 95-10, that that somehow insulates them
14 from the proposed cease and desist order. And I think
15 that we could dispose of that issue with some legal
16 briefs. So I think that that's a possibility that we
17 would suggest and raise to you.

18 And other than that, I don't have any comments at
19 this point.

20 MR. JACKSON: Mr. Baggett, are we going to get to
21 that issue right now?

22 BOARD MEMBER BAGGETT: I would like to go down
23 the parties and you can respond or see if there's any --
24 get all the issues on the table first.

25 So Cal American Water Company.

1 MR. RUBIN: We do have a number of issues that we
2 would like to raise. And I'll just go through them
3 generally. As I said earlier, this is Jon Rubin for
4 California American Water. I would like to discuss the
5 scope of the proceeding. I believe there is, at least a
6 potential based upon the notices of intent to appear, a
7 difference in view as to what the scope of the proceeding
8 is.

9 I would like to talk about the potential of
10 bifurcating the hearing to address kind of what's
11 traditionally called a liability phase versus a remedy
12 phase as a mechanism.

13 STAFF COUNSEL TAYLOR: Versus the what phase?

14 MR. RUBIN: A remedy. A question about whether
15 there's a basis for issuing a cease and desist and then
16 what is the appropriate remedy if one issues.

17 Also, a question about pre-hearing briefing. A
18 little bit was just touched on, but there's a number of, I
19 think, legal issues that could be raised prior to the
20 hearing, whether there's an opportunity for pre-hearing
21 briefing.

22 The next issue deals with closing briefs. And
23 just wanted to make sure that we talk a little bit about
24 that and have the opportunity to set forth the hearing
25 with a recognition that there would be closing briefs and

1 replies to the closing.

2 And then the last deals with the staff exhibits
3 that were identified. I've been trying to obtain some
4 clarity as to what documents are in those files.

5 MR. BAIOCCHI: Mr. Baggett. This is Bob
6 Baiocchi.

7 BOARD MEMBER BAGGETT: Yes.

8 MR. BAIOCCHI: I'm hearing-impaired and Mr. Rubin
9 comes in very, very low.

10 MR. RUBIN: I apologize. I will try to speak
11 louder.

12 BOARD MEMBER BAGGETT: Thank you.

13 Let's just go down and continue to get what
14 people want to talk about, then we'll just go down one at
15 a time.

16 Monterey Peninsula, Carmel-By-The-Sea, Seaside,
17 do you have any other issues?

18 MR. FREEMAN: Yes, this is Don Freeman
19 representing the City of Carmel-By-The-Sea. And the
20 issues that we'd be interested in would be supporting a
21 bifurcation, first of all, because we think that would be
22 important. And the City of Carmel-By-The-Sea would be
23 interested in dealing with the remedy phase. But in
24 addition to that, assuming there are no objections from
25 the other cities that are on the phone, I'd be willing to

1 coordinate all of the cities together, because I think
2 they're going to be like-minded. And in terms of
3 coordinating speeding up the effort of the hearing, I
4 think in line with what your comments were earlier, I
5 think that might be appropriate. And I'd be prepared to
6 take that responsibility if everybody concurs.

7 BOARD MEMBER BAGGETT: Okay. Well, talk to the
8 other cities, I guess and --

9 MR. FREEMAN: Well try and do that today.

10 MR. MCGLOTHLIN: Russ McGlothlin on behalf of the
11 City of Seaside and the Seaside Basin Watermaster. I
12 concur with the comments of Don Freeman. We both support
13 the concept of bifurcation because we believe, you know,
14 most of the testimony, aside from what Cal Am would
15 present, is isolated to the remedy phase. And I certainly
16 concur with coordination amongst the like-minded parties,
17 which would include all the cities.

18 STAFF COUNSEL TAYLOR: If you'll pardon a brief
19 interruption, I believe you jumped in ahead of Mr. Laredo.

20 MR. LAREDO: Thank you. This is David Laredo on
21 behalf of the Monterey Peninsula Water Management
22 District.

23 I would agree with the comments that have been
24 made been so far. I do believe that this proceeding does
25 lend itself to bifurcation. That would streamline the

1 presentation of the testimony. Certainly, the question as
2 to should the cease and desist order be issued is in the
3 first question. And then if issued, should it be modified
4 and what is the timing of the remedies that would be used
5 and implemented?

6 So we would agree fully with the bifurcation.

7 BOARD MEMBER BAGGETT: So we're down to Pebble
8 Beach Company.

9 MR. JAMISON: Mr. Baggett, my name is Thomas
10 Jamison representing the Pebble Beach Company. Really,
11 the primary perhaps sole purpose of Pebble Beach Company
12 and its participation is to have recognized the Pebble
13 Beach water entitlement of 380 acre feet, which has been
14 granted by the Monterey Peninsula Water Management
15 District to Pebble Beach Company.

16 Frankly, we would hope that a stipulation could
17 be reached among the parties, because the water
18 entitlement has consistently been recognized by both the
19 State Board and California American Water Company as a
20 valid water entitlement. It's recognized in Order 95-10
21 and as well as subsequent correspondence from State Board
22 staff.

23 So we would -- hopefully, we would be able to
24 reach a stipulation with the parties that would modify the
25 cease and desist order, at least recognize this, that

1 would avoid this as an issue in the hearing and allow us
2 to not have to participate.

3 Thank you.

4 BOARD MEMBER BAGGETT: Monterey County
5 Hospitality Association.

6 MR. LOWERY: This is Lloyd Lowery. Bob McKenzie
7 is also on the line. He signed the notice of intent to
8 appear. We agree with the stipulation. As I mentioned
9 earlier, we have in our notice of intent to appear
10 designating certain persons as experts and I think that we
11 may want to change that. I don't want to do it this
12 morning, but I want to be able to submit something that
13 modifies that. Otherwise, I agree with what's been said.

14 And we would try to coordinate with the cities
15 and the other interested parties to the extent that our
16 issues are similar.

17 BOARD MEMBER BAGGETT: Okay. That would be
18 helpful.

19 Planning and Conservation League. Jonas.

20 MR. MINTON: This is Jonas Minton. I have
21 nothing to add at this time.

22 BOARD MEMBER BAGGETT: National Marine Fisheries?

23 MR. KEIFER: Neil, do you want to speak?

24 This is Chris Keifer. My colleague Neil isn't
25 responding. I don't know if he's still --

1 MR. MOELLER: No, I just neglected to take my
2 phone off mute. So I apologize for that. I was speaking
3 to myself.

4 Good morning. This is Neil Moeller with NOAA
5 Office of General Counsel. We're the National Marine
6 Fisheries Service along with Christopher Keifer in our
7 Long Beach office. I apologize that I was a little late
8 this morning. I was challenged getting the dial-in
9 number.

10 I was curious to know procedurally if there will
11 be a Minute Order coming out of this pre-hearing
12 conference to capture some of the understandings that
13 we're discussing now.

14 BOARD MEMBER BAGGETT: If we make modifications,
15 certainly there will be. At this point, we haven't made
16 any decisions.

17 MR. MOELLER: As I came in, you were explaining
18 the effect of Order 95-10's findings regarding fishery
19 effects of Cal Am's past diversions. Is that a concept
20 that would be captured in some sort of a summary of
21 today's discussion?

22 BOARD MEMBER BAGGETT: No.

23 MR. MOELLER: Okay. All right. Thank you.

24 The other question I have is as we go forward,
25 I'd be interested if folks would elaborate a little bit on

1 what they see as the virtues of bifurcating the proceeding
2 as some have suggested. I'm not sure that I see the
3 advantages of that from the National Marine Fisheries
4 Service's perspective.

5 BOARD MEMBER BAGGETT: Okay.

6 MR. MOELLER: Very good. Do you have anything?
7 That's all I have

8 MR. KEIFER: No. All I would have said was that
9 I don't have an opinion on bifurcation at this time.

10 BOARD MEMBER BAGGETT: Sierra Club. Mr. Silver.

11 MR. SILVER: Sierra Club is concerned with the
12 scope of the hearing and would like to make certain
13 suggestions with respect to a modification --

14 BOARD MEMBER BAGGETT: Please.

15 MR. SILVER: -- of the notice with regard to
16 scope.

17 There are some issues that I think Mr. Jackson is
18 going to address. I'd like to address initially a
19 provision of Board Order 2002 -- rather an order
20 reconsidering that. I'm sorry.

21 I'd like to talk about a provision of WRO
22 2002-2002, which basically, as I read it, although it
23 applies to diversions from San Clemente Dam specifically
24 states that the -- specifically states that with regard to
25 diversions in general, "The Chief of the Water Division is

1 also delegated the authority to modify the flow
2 requirements of this order in response to any changes in
3 the requirements imposed under the Endangered Species Act
4 as necessary to prevent this order from being in violation
5 of the Endangered Species Act or unreasonably interfering
6 with efforts to comply with the Endangered Species Act."

7 I'd like to note for purposes of this proceeding
8 that by letter dated March 14th, 2008 Carmel River
9 Steelhead Association and the Sierra Club have filed a
10 60-day notice of intent to sue with regard to alleged
11 takings, unlawful takings under the Endangered Species Act
12 by Cal Am. The 60-day notice letter is addressed to the
13 Board, among others. Although, no specific relief is
14 requested against the Board. This is basically in
15 contemplation of a filing in federal court at some future
16 date seeking basically relief against unlawful takings,
17 which are a direct violation of the Endangered Species
18 Act. So the letter did go to the Chair of the State Water
19 Resources Control Board, NOAA, Cal Am and others.

20 So specifically with respect to the notice that
21 the Board sent here. We feel that it would be appropriate
22 and consistent with the retained jurisdiction that is set
23 out in the order reconsidering WR Order 2001-04 that part
24 of this proceeding contemplate the submission of evidence
25 with regard to violations of the Endangered Species Act.

1 And particularly, of course, and I think what remediation
2 through the cease and desist order this board could take
3 essentially to reduce those takings or eliminate those
4 unlawful takings.

5 And so we're just saying that that's an
6 adjunctive -- kind of adjunctive function, which we think
7 is an appropriate function under the reserve jurisdiction.
8 And although it is noted in the staff exhibits that this
9 particular order of the Board is to be an exhibit, I did
10 not see anything in the notice which would indicate that
11 the hearing was itself to be in some way based upon
12 paragraph 1 at page 18 of the order that I'm addressing
13 with regard to the reservation of jurisdiction with
14 respect to the Endangered Species Act.

15 Secondly, and I'm going to defer to Mr. Jackson
16 on this, we are concerned about the issues that were
17 raised by Mr. Baiocchi in his letter, some of which you
18 may have just addressed Chairman Baggett. And those
19 issues go with respect to making it clear that there will
20 be evidence submitted with regard to the present state of
21 Steelhead, and, in fact, what has occurred on the river
22 since Order 9510.

23 And we would also at this point also make a
24 request, and I think that Mr. Jackson will elaborate on
25 this, that there be explicit consideration in the notice

1 being given not only to the public trust doctrine as
2 bearing on the issue of remedies, but that Fish and Game
3 Code 5937 relating to fish passage problems at the San
4 Pablo Dam be addressed as well. So I'll defer to my
5 colleague Mr. Jackson for that.

6 MR. JACKSON: I think we're probably at San
7 Clemente Dam rather than San Pablo Dam.

8 First of all, I want to endorse and support the
9 letter written by Bob Baiocchi on behalf of his clients.
10 I think it's a very thoughtful letter. I think what he
11 requests is appropriate for the hearing.

12 In regard to the bifurcation, both the California
13 Sportfishing Protection Alliance and the Carmel River
14 Steelhead Association oppose the bifurcation at the
15 present time. And we do that understanding that it's been
16 13 years since this Board's predecessor declared the law.
17 And in that 13 years, we've come very, very close to
18 losing the Steelhead.

19 So we agree that the scope ought to be expanded
20 to include, as Mr. Silver said, all of the areas within
21 the State Board's jurisdiction. I don't know whether you
22 would like us to file a formal complaint with the State
23 Board prior to expanding this hearing or whether or not,
24 as we believe, as Mr. Silver has just told you, that the
25 extent of the order and the reference to the Steelhead and

1 the Endangered Species Act are such that this Board has
2 the authority to take a look at what's happened on the
3 river by the neglect of Cal Am to do pretty much anything
4 since 1995.

5 Clearly, what we are envisioning is a hearing
6 that will bring you all up to speed and that requires the
7 folks who have been found to be illegally diverting water
8 to sort of fish or cut bait as to what they're going to
9 do. They didn't do anything in the 20th century, so
10 hopefully we won't have to wait through the 21st century.

11 So, at this point, we would oppose bifurcation.
12 We would like to have the broadest scope of the hearing
13 commensurate with all of your authorities.

14 BOARD MEMBER BAGGETT: Let me follow up with a
15 question. It seems that your argument though would be
16 supporting dealing with the liability, the condition of
17 the river, the liability issues and whether there is any
18 legal liability and what the condition is that would be a
19 background that one would want to know before we even
20 talked about whether there is a remedy and what that
21 remedy is.

22 MR. JACKSON: Our position is that the liability
23 has been established by the order. The cease and desist
24 order is an appropriate narrow first step. And what
25 we're -- we support the cease and desist order at the

1 present time. It's not fast enough for us and may not be
2 fast enough for the Steelhead, but it is certainly a step
3 forward to actually begin to reduce the illegal diversions
4 after all these years.

5 BOARD MEMBER BAGGETT: But if this Board, under
6 our reservation of jurisdiction, you're asking us, as I
7 understood it, and the Sierra Club, to reopen basically
8 the order. Reopen the hearing. Take new evidence in on
9 the state and the condition of the river. That seems to
10 me is going to be more than a 2-day proceeding.

11 MR. JACKSON: Well, definitely it's going to be
12 more than a 2-day proceeding.

13 BOARD MEMBER BAGGETT: A few weeks. And that
14 wouldn't be as quick as just dealing with the narrow issue
15 of the cease and desist, which is before us now. It's
16 much narrower than opening up the whole proceeding.

17 I'm trying to understand how -- it would take
18 longer -- I'm trying not to be argumentative. I'm just
19 trying to understand how --

20 MR. JACKSON: I guess, Mr. Baggett, the best way
21 to refer to this, particularly since you brought up the
22 Imperial case, is that efficiency in front of the State
23 Board does not always result in efficiency in the legal
24 aspects. There's 11 lawsuits over mistakes made, we
25 believe, by the State Board in Imperial that have been

1 going on now for -- ever since you've finished.

2 The fall back is that all of them were based upon
3 your hearing. And it's been years. We've been to the
4 appellate courts and back. It seems to me that taking a
5 little more time to prepare a complete record --

6 BOARD MEMBER BAGGETT: That took 45 days as I
7 recall.

8 MR. JACKSON: I understand.

9 BOARD MEMBER BAGGETT: It was not a short
10 hearing.

11 MR. JACKSON: I'm not at all expecting this one
12 to take 45 days. But the idea is that we believe that
13 everybody will be better off with a full and complete
14 hearing however many days it takes. And I believe with
15 you and Mr. Wolff or whoever is going to hear it,
16 operating with a whip, you can move us along. But in the
17 end, if you only deal with a little piece of your
18 jurisdiction, we've missed an opportunity to get on the
19 right track on this river.

20 BOARD MEMBER BAGGETT: Okay.

21 MR. RUBIN: Hearing Officer Baggett, can I
22 respond? I've been trying to be patient and have you
23 identify what issues we need to discuss, but in looking at
24 the clock and realize that we have 20 minutes probably
25 until we need to complete this, I think there's a lot of

1 issues that are being thrown out there. And from my
2 perspective, the focus of the hearing has to be based upon
3 the January 15th 2008 letter that was sent by Mr. Kassel
4 to my client.

5 In that letter, which provided us notice as
6 required by the Water Code, the issue was, in my mind,
7 very well defined. And it's a question of whether
8 California American Water violated Condition 2 of Order
9 95-10. And I think that's the focus is looking at what
10 the Board has said in 95-10 under Condition 2 and
11 determining whether the company has violated that
12 provision. And that's the notice that we received.
13 That's the basis upon which we filed our notice of intent.

14 If there's a desire to have the Board revisit
15 95-10, essentially act as if that order is not there and
16 move forward, there's a number of issues that we need to
17 discussed. You've touched on one of them, res judicata.
18 That was an order that was issued. Litigation was filed.
19 Litigation was settled. In my mind, the Board addressed
20 the trespass issues, addressed the effects on public
21 trust. The Order 95-10 is how you dealt with that. And
22 we have that order as background. People might not like
23 it, but the time to challenge that order has come and
24 gone.

25 If we decide -- if you decide to expand the

1 issues, I think that's much more beyond the scope of the
2 notice that was provided to California American Water.
3 And that's why I think there's a threshold issue
4 discussing what the scope is is very important. Then it
5 gets to the next issue of, in my mind, the involvement of
6 persons or entities that were not identified as parties in
7 the notice.

8 Again, I think that there's a lot of issues that
9 we still need to discuss about the involvement of so many
10 people. If I calculated it correctly, just direct
11 testimony is set right now for about 23 hours with, I
12 think, 60 witnesses. There might be some duplication
13 there. Again, that's a lot more witnesses than I think is
14 necessary to address the issues, even if it's a larger
15 scope. There's a huge burden that would be placed on the
16 company that would be placed on your prosecution team, and
17 I look at it very similar to how a court would evaluate
18 intervention. And at some point having, you know, 10
19 parties presenting evidence on Steelhead or 10 parties
20 presenting evidence on appropriate remedy impacts on
21 cities and municipalities becomes just unduly burdensome.
22 So I think we need to get through all of those issues.

23 And ultimately if the Board decides to expand
24 this scope, there's a another issue in terms of how we
25 might want to present our case.

1 BOARD MEMBER BAGGETT: Right.

2 VICE CHAIRPERSON WOLFF: I need to briefly make a
3 comment on a different matter. Those on the telephone --
4 this is Gary Wolff, one of the hearing officers. Those on
5 the telephone, you need to mute your phones or cease from
6 making typing, breathing and paper shuffling noises. That
7 would be very helpful to us in this room.

8 Thank you.

9 MR. SILVER: Chairman Baggett, may I briefly
10 respond to the remarks

11 BOARD MEMBER BAGGETT: Let me get through the
12 rest of this and see if there's anything else and then
13 we'll come back and deal with it. I appreciate the
14 concerns. And I think the dialogue, Mr. Jackson -- I
15 think -- I understand the 2 parties' concerns here.

16 But let's see if any other parties have any
17 comments. We've got Michael. I think we've got most of
18 them.

19 Does CalSPA -- Mr. Baiocchi, do you have any
20 additional comments that haven't been raised or
21 concurrences with your predecessors?

22 MR. BAIOCCHI: Okay. My name is Bob Baiocchi.
23 Yes, I have some concerns.

24 BOARD MEMBER BAGGETT: Okay.

25 Number 1, I agree with and I thank Mr. Jackson

1 and Mr. Silver for their presentation and highlighting the
2 letter I wrote Mr. Taylor and all that.

3 And secondly, for me, this is a very important
4 issue and for other folks that may want to appear, but you
5 need, I think at this pre-hearing conference, to make a
6 decision whether or not disabled people can testify at the
7 hearing without being present.

8 BOARD MEMBER BAGGETT: I think that was one of
9 the issues I wanted to discuss eventually today. From my
10 recollection, there's been one time that has been used by
11 this Board and it was through a deposition process. And I
12 believe it was in the Mono Lake case, where there was --
13 parties were allowed to go depose a witness who was
14 absolutely unable to be here. And I think in that case
15 the witness had just, I think, not very long to live and
16 was a major witness.

17 And I think I want to discuss that with the
18 parties. If that was agreeable, it would certainly be
19 agreeable to, I think, the hearing officers and our staff.

20 MR. BAIOCCHI: Okay. May I go on, sir?

21 BOARD MEMBER BAGGETT: Sure.

22 MR. BAIOCCHI: One of the things it will do for
23 me, if I'm not going to be allowed to testify, then I
24 don't have to submit written testimony. And I save myself
25 a lot of time, but I want to be a witness. And I believe

1 I can bring a lot of information.

2 So anyway -- and it would be in compliance with a
3 ADA, you know that. And I think it would be a wonderful
4 step forward, because there may be other people out there
5 that are disabled and that can't travel to Sacramento to
6 testify, you know. Okay, you're going to hit on that.

7 Let me go a little bit further. The California
8 Salmon and Steelhead Association represents the victims.
9 And I think that's one of the key issues that should be on
10 the scope of the meeting is the harm and damage to
11 threatened Steelhead. They're a public trust resource and
12 asset. I think that's very, very important. And Mr.
13 Jackson and Mr. Silver brought that up, but I think it's
14 very important.

15 Anyway, that's about it.

16 BOARD MEMBER BAGGETT: Okay. Well, we'll get to
17 that other issue --

18 MR. BAIOCCHI: Thank you very much for allowing
19 me to talk.

20 BOARD MEMBER BAGGETT: -- in just a minute.

21 Mr. Warburton, do you have any other comments?

22 MR. WARBURTON: Yeah. We completely support Mr.
23 Jackson and Mr. Silver and also the introduction of
24 additional evidence suggested by Bob Baiocchi. We're
25 concerned that there be a full and public airing of the

1 issues involved here, and there not be bifurcations and
2 narrowing of scopes, which are to the advantage of
3 handling issues quietly and under the Board. Such things
4 as stipulations of golf course water, you know, are a
5 problem.

6 The Board is facing a larger issue and all of
7 these issues should be publicly aired and the public trust
8 should be defended and a lot of the parties appearing
9 before you now are there because the public trust has not
10 been adequately defended in the past. And we're
11 completely willing to collaborate and do stuff
12 efficiently, but we want to make sure that these important
13 issues are represented.

14 BOARD MEMBER BAGGETT: Public Utilities,
15 Ratepayer Advocates, do you have any other comments?

16 MR. ULMER: Thank you, Mr. Baggett. Andrew Ulmer
17 again for the Division of Rate Payer Advocates. I just
18 wanted to clarify a point you made to me earlier, a
19 procedural point, and that is the Division of Rate Payer
20 Advocates, would like very much to inform the State Water
21 Resources Control Board's record, but I want to make sure
22 I understand how you envision us doing that.

23 We're certainly willing to come and make an
24 opening statement at the evidentiary hearing. We're
25 certainly willing to present that statement in writing.

1 But I want to understand when you'd like that in writing,
2 whether or no it' acceptable to present that at the outset
3 of a formal evidentiary hearing in June.

4 BOARD MEMBER BAGGETT: Right. That will all be
5 by notice.

6 MR. BAIOCCHI: Bob Baiocchi. I have a question.

7 BOARD MEMBER BAGGETT: Wait. Let's respond.
8 We'll respond first to that.

9 MR. BAIOCCHI: Sorry.

10 STAFF COUNSEL TAYLOR: This is Buck Taylor
11 speaking. I've had conversations with Mr. Ulmer -- some
12 Email exchanges in any event. And from my understanding
13 of what you're offering in the NOI, it was more in the
14 nature of a legal brief or policy statement. When I heard
15 your statement today, it sounded like you did have some
16 matters of an evidentiary nature to offer. If you wish to
17 offer evidence, then you should bring proposed witnesses
18 for that. If you're not going to propose witnesses, I
19 think the appropriate way to deal with this is either
20 through a policy statement in writing or a verbal one on
21 April 1. Or in the alternative, as a legal brief if
22 that's offered as an option here today.

23 BOARD MEMBER BAGGETT: Yeah, I think if it's to
24 understand what the statutory authority of the Rate Payer
25 Advocates, what the scope of your role is, and we can take

1 judicial notice if it's a statute or if it's a law and you
2 can just enter that and not have to have a witness, if
3 you're just on the face of what your legal authority is,
4 for example. It sounds like that's what you want to
5 explain to us is what your role is, what the concern is by
6 statute of Rate Payer Advocate?

7 MR. ULMER: I'd say yes and possibly no. We
8 probably would want to amplify more on some factual
9 issues. And I think what we're struggling with is the
10 nuance between a policy statement and the value that you
11 can give to that policy statement versus a quote unquote
12 evidentiary record before the Board and the value you put
13 on that.

14 BOARD MEMBER BAGGETT: I think it's much greater.
15 I mean I would prefer you to bring a witness that can be
16 cross examined and the parties can ask questions on --
17 that would be it ideally.

18 MR. RUBIN: Hearing Officer Baggett, that's one
19 of the issues that I raised earlier, the idea of some sort
20 of pre-hearing briefing. I think that this might lend
21 itself to that type of a submittal. We would like that
22 opportunity for similar reasons to file a pre-hearing
23 brief to touch on some legal issues and issues that might
24 be presented through evidence for which you could take
25 official notice.

1 BOARD MEMBER BAGGETT: Yeah, I think I heard that
2 from the prosecution team. I've heard that I think -- it
3 definitely will be worthwhile to do a pre-hearing brief.
4 And I think whether we can rule from dais in 10 minutes on
5 exactly the scope and nature of that brief, I'm not
6 prepared to. I would take that under submission and I
7 think we could get instructions out within a week on what
8 issues we would like to have in a pre-hearing brief. And
9 I think then we could take some of these very issues here.
10 Do we want to bifurcate some of the issues, I think, Mr.
11 Sato raised

12 We've got a whole list here. And the Board can,
13 on its own motion, reopen the Water Right proceeding. But
14 I would agree with Mr. Rubin that would require a whole
15 different notice and a whole different set of issues. In
16 fairness to all parties, we would have to do a notice that
17 reflects what I think Mr. Jackson has asked us to do. And
18 I would assume Mr. Jackson would concur that we would have
19 to notice that as such.

20 MR. JACKSON: Yes. And I think what you would
21 find is that if you noticed that as such, we wouldn't
22 be -- NMFS has showed up on the telephone, but the
23 California Department of Fish and Game still isn't here.
24 These are the agencies that I think you're going to need
25 prior to any remedy anyway. So it seems to me that that

1 might be a first step is to broaden the scope in a new
2 notice.

3 BOARD MEMBER BAGGETT: Well, I think those are
4 the issues that I think we need to brief and get the
5 parties' comments in writing, not here off the cuff
6 without consulting with clients and -- I mean, I
7 understand you all have clients and boards you have to go
8 back and consult with also, mayors, things like that that
9 might want to engage in these discussions.

10 Who else have we got here? Anybody else that
11 we've missed? City of Monterey, Fish and Game? Any other
12 parties have any other issues?

13 MR. BAIOCCHI: This is Bob Baiocchi. I had
14 raised a question concerning Mr. Ulmer, you know, the
15 policy statement. And I was concerned about
16 cross-examination. That was the only question I was going
17 to ask is would it be subject to cross-examination.

18 An example, I can tell you that 2 plus 2 makes 9,
19 you know, in a policy statement, but that's not factual.

20 BOARD MEMBER BAGGETT: Exactly. No, exactly. I
21 appreciate that. That's why I think we might be able to
22 dispose of some of these in a pre-hearing brief. But if
23 it's going to be evidence that we're going to need in the
24 record, they need to be available for cross-examination,
25 for hearing officers and our staff to ask questions of.

1 And I think it would be probably helpful, especially in
2 the remedy phase of this proceeding, to understand the
3 PUC. Since it is a publicly regulated utility, it would
4 be useful for this Board to understand, and I think for
5 the other parties, what does that mean and how does that
6 affect some of these remedies.

7 MR. BAIOCCHI: Thank you.

8 BOARD MEMBER BAGGETT: Let me do one last issue.
9 Then we will send out within a week a list of issues to be
10 briefed, but I would like to dispose of the deposition
11 issue. I guess I would -- unless anybody objects, I
12 would, if Mr. Baiocchi wants to provide written testimony
13 in advance according to the notice of intent in our
14 regulations and is available by deposition, is there any
15 objection to any party of that?

16 MR. RUBIN: I don't -- I won't object to that,
17 but as long as your ruling on this issue is subject to
18 your subsequent decision on the scope of the proceeding.
19 There's a potential, I hope, that the hearing officer will
20 decide that the scope is limited to whether the company
21 has violated Condition 2 of 95-10. And if that's the
22 case, whether Mr. Baiocchi submits testimony or not or
23 whether it's relevant could be affected.

24 BOARD MEMBER BAGGETT: Well, that is the current
25 scope of this proceeding. And I think we want to allow an

1 opportunity for pre-hearing briefs. And one of those
2 issues will be the request that we've had from Mr.
3 Jackson, et al. to expand the scope. And we'll allow the
4 parties to brief that and then we'll rule.

5 MR. RUBIN: Thank you.

6 BOARD MEMBER BAGGETT: Okay. Any other comments?

7 MR. LAREDO: We'll you provide an opportunity for
8 rebuttal briefs? This is David Laredo.

9 BOARD MEMBER BAGGETT: On the pre-hearing briefs?

10 MR. LAREDO: That's correct.

11 OFFICE OF ENFORCEMENT DIRECTOR SATO: Mr.
12 Baggett, I mean I'd like to -- I had that same question
13 and I think that the prosecution team would --

14 BOARD MEMBER BAGGETT: Could you identify for the
15 record.

16 OFFICE OF ENFORCEMENT DIRECTOR SATO: This is
17 Reed Sato for the prosecution team. You know, I had the
18 same question about whether or not we would have the
19 opportunity to reply to briefs by the other parties. And
20 I think, particularly with regard to the scope of the
21 proceeding, if somebody wants to substantially expand it,
22 I think that we should have the opportunity to address
23 that issue.

24 BOARD MEMBER BAGGETT: Very good. Okay, we will
25 do that. So what's a reasonable time? We'll get

1 something out within a week, 7 days, with the list of
2 issues. How long do the parties want to brief that?

3 MR. SILVER: Can I just address a question with
4 respect to the --

5 BOARD MEMBER BAGGETT: Can you identify yourself
6 just for this speaker.

7 MR. SILVER: Yeah. This is Larry Silver, Sierra
8 Club.

9 I think with regard to the list of issues, I
10 think that the issue -- I understand Cal Am's contention,
11 but I think that, I'd just like to make clear that at
12 least from the perspective of Sierra Club that we deem the
13 notice with regard to the cease and desist order, not the
14 cover letter, as defining the scope of this hearing.

15 Now, the notice says specifically -- we're
16 dealing with 2 different, although amalgamated, problems.
17 One is the fact of an unlawful trespass, the continued
18 jurisdiction of this Board to deal with that unlawful
19 trespass as defined under California law by reason of
20 their failure over many, many years not to get a permit.

21 There's a second issue with regard to a violation
22 of condition. However, the cease and desist order says,
23 among other things, that, "In accordance with the
24 provisions of Section 1834 of the California Water Code,
25 the State Water Board, Division of Water Rights, provided

1 notice of the proposed CDO against Cal Am for the
2 violation and threatened violation of the prohibition
3 against unlawful, unauthorized diversion and use of
4 water."

5 Now that means to us that there's much more at
6 stake in this hearing than whether or not Cal Am complied
7 with Condition 2. And that's, of course, one reason we're
8 adamantly opposed to this sort of suggestion of
9 bifurcation. But if we're talking about defining the
10 issues, then I would certainly urge, and I think the staff
11 has already recommended that, that we address the scope of
12 the hearing, which is defined, as far as we're concerned,
13 in the notice with regard -- and the text of the proposed
14 cease and desist order.

15 BOARD MEMBER BAGGETT: No, I understand. And
16 that's why I think it's appropriate that we do a
17 pre-hearing brief and we allow for rebuttal of those
18 briefs. And that is clearly going to be one of the
19 issues, not the issues that you would raise in this
20 expanded hearing, that will be decided at a later date,
21 but the fact is how do you legally interpret the notice
22 before us. And I think we will have a lot of different
23 views on that. And I have already said we'll do a
24 pre-hearing brief and we'll have rebuttal of those briefs.

25 So we've got to expedite this. We've got 3

1 minutes. So I would ask, again, is a week long enough, 2
2 weeks? What do the parties want? I mean, especially, I
3 guess, the 2 that are going to have the biggest burden or
4 the largest burden are going to be the 2 principal
5 parties. I'll ask you, what time -- how long do you feel
6 you need? Prosecution team and Cal Am, what do you --

7 OFFICE OF ENFORCEMENT DIRECTOR SATO: Since this
8 isn't my only case, I would ask for 3 weeks with a one
9 week rebuttal?

10 MR. LAREDO: Who is speaking?

11 BOARD MEMBER BAGGETT: Identify your name.

12 OFFICE OF ENFORCEMENT DIRECTOR SATO: This is
13 Reed Sato for the prosecution team. I would like 3 weeks
14 and then with a 1 week rebuttal time.

15 BOARD MEMBER BAGGETT: Mr. Rubin?

16 MR. RUBIN: Just for a point of clarification, 3
17 weeks from today or 3 weeks from the date of the --

18 OFFICE OF ENFORCEMENT DIRECTOR SATO: Three weeks
19 from the notice that we get.

20 MR. RUBIN: That would provide sufficient time
21 for us.

22 MR. BAIOCCHI: Mr. Baggett, Bob Baiocchi.

23 BOARD MEMBER BAGGETT: Just a minute please.

24 Okay, we're just trying to come up with an
25 expedited -- to save paperwork. So what we will do is you

1 have 3 weeks from today for any party to these proceedings
2 who filed a notice of intent to outline whatever issues
3 you think this -- however you think we should proceed in
4 this. You've got the notice that we've sent out. So I
5 guess it would be interpreting that notice. It could go
6 to bifurcating the scope. We will leave it wide open for
7 you to brief whatever issues you like.

8 Then we will allow 2 weeks after that for
9 rebuttal to those 3 briefs. So you have 3 weeks for the
10 preliminary and then 2 weeks to file rebuttal. Obviously,
11 we aren't going to have a hearing in June now.

12 MR. LAREDO: Can you provide us date certain as
13 to what the 3 week and 2 week submittal deadline is?

14 This is David Laredo.

15 BOARD MEMBER BAGGETT: Three weeks from today.
16 So that way 5 o'clock on whatever -- what's 3 weeks?

17 MR. RUBIN: The 9th of April, I believe.

18 BOARD MEMBER BAGGETT: Okay, 3 weeks from the 9th
19 of April and then 2 weeks after that is the 23rd. And
20 then we will have a ruling by the end of the first week of
21 May.

22 MR. RUBIN: Just one other issue. I would hope
23 that you are reserving your right to determine the status
24 of persons or entities that are not designated in the
25 notice as parties until you've determined what the

1 appropriate scope is. Again, I would like to address this
2 issue. I know that you've encouraged the parties to work
3 together, but --

4 BOARD MEMBER BAGGETT: Okay. But first let's get
5 through the briefs, then we will re -- we'll probably do
6 some type of renote after that. We also have one other
7 person I forgot. We did get a late notice of intent from
8 Defenders of Wildlife. Is anybody on here from Defenders?

9 I didn't ask.

10 So 3 weeks from today by 5 o'clock, close of
11 business. And then we will send out a notice. You'll
12 have 2 weeks from that date. And if you could serve all
13 other parties when you serve us with your pre-hearing
14 brief. And then we will --

15 MR. LAREDO: May I ask that the staff reissue the
16 service list, because I do not have a note of intent by
17 California Sportfishing Protection Alliance or for
18 Defenders of Wildlife. So it would be helpful if we have
19 a revised service list. This is David Laredo.

20 BOARD MEMBER BAGGETT: Is electronic service okay
21 with you, Mr. Baiocchi?

22 MR. BAIOCCHI: I represent California Salmon and
23 Steelhead Association.

24 BOARD MEMBER BAGGETT: Right, but we can send you
25 an electronic service list.

1 MR. BAIOCCHI: Yes. And it doesn't have to be --
2 I've got Word. I use Word.

3 BOARD MEMBER BAGGETT: Very good.

4 VICE CHAIRPERSON WOLFF: With respect to the
5 lengths of the briefs, we can either limit them or you can
6 limit yourselves. I assure I will try to read them, but
7 the longer they are, the less carefully I will read every
8 word. So shall we try to limit the length?

9 OFFICE OF ENFORCEMENT DIRECTOR SATO: You know,
10 Mr. Wolff, I'd suggest not having a limitation. You
11 haven't told us -- you haven't put any limit on the issues
12 that we address.

13 VICE CHAIRPERSON WOLFF: I understand. That's
14 why a limitation on the length might be helpful.

15 BOARD MEMBER BAGGETT: Well, I'm comfortable with
16 using your discretion, recognizing full well what I think
17 Mr. Wolff just said, that when you've got 18 parties and
18 if you all right 100 pages, it's going to be difficult --

19 VICE CHAIRPERSON WOLFF: All right. That's fine.

20 BOARD MEMBER BAGGETT: -- for everybody. So just
21 try to be -- you're all attorneys. You know how to be
22 brief.

23 (Laughter.)

24 MR. MCGLOTHLIN: Chairman Baggett, one item of
25 housekeeping, on the service list, just for staff, the

1 Seaside Basin Watermaster is not listed there. They are
2 represented by our office as the City of Seaside, but they
3 ought to be listed as an individual party there, please.

4 BOARD MEMBER BAGGETT: Very good. So noted.

5 MR. SILVER: For Sierra Club, Larry Silver. We
6 would urge that if there is a necessity to change the date
7 of the hearing from June, that it be as soon thereafter as
8 possible, because we filed originally the complaint, I
9 believe, in 1994.

10 BOARD MEMBER BAGGETT: Well, I can assure you, if
11 it's not going to be June, I don't think we could prepare
12 cases -- it wouldn't be fair to any party, but we will --
13 sure. We don't want to drag this into a year from June --
14 we'll do it -- given the fact that we'll be moving into
15 the summer months, it can be a challenge, because I
16 realize you all have other lives. And I hate to schedule
17 things around major holidays, if we can avoid that. But
18 we will do it as quickly as we can giving official notice
19 and giving parties appropriate time to prepare their case.
20 Our goal is not to delay this.

21 MR. SILVER: Well, of course, our position, Mr.
22 Baggett --

23 BOARD MEMBER BAGGETT: I understand.

24 MR. SILVER: -- is that they've had plenty of
25 notice.

1 BOARD MEMBER BAGGETT: I understand.
2 Okay, thank you.
3 (Thereupon the Pre-Hearing conference
4 adjourned at 10:06 a.m.)
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