



**Linda S. Adams**  
*Secretary for  
Environmental Protection*

# State Water Resources Control Board

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## Division of Water Rights

1001 I Street, 14<sup>th</sup> Floor ♦ Sacramento, California 95814 ♦ 916.341.5300  
P.O. Box 2000 ♦ Sacramento, California 95812-2000  
Fax: 916.341.5400 ♦ [www.waterrights.ca.gov](http://www.waterrights.ca.gov)



**Arnold Schwarzenegger**  
*Governor*

## NOTICE OF PUBLIC WATER RIGHT HEARING

**The State Water Resources Control Board will hold a hearing  
on Proposed Revocation of Permit 19873 (Application 28480)  
of the City of Rio Vista**

**Sacramento River in Solano County**

**The hearing will commence on Wednesday, February 21, 2007 at 10:00 a.m.  
at  
Joe Serna, Jr./Cal-EPA Building  
1001 I Street, Second Floor Coastal Hearing Room  
Sacramento, CA**

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### SUBJECT OF THE HEARING

The purpose of this hearing is for the State Water Resources Control Board (State Water Board) to receive evidence relevant to determining whether Permit 19873 (Application 28480), assigned to the City of Rio Vista (permittee), should be revoked for failure to construct the project and to apply water to beneficial use as described in the permit.

### BACKGROUND

On August 26, 1986, the State Water Board's Division of Water Rights (Division) issued Permit 19873 to the permittee. This permit authorizes the permittee to divert water from the Sacramento River at 9.6 cubic feet second from January 1 to December 31 of each year, not to exceed 3,790 acre-feet of water per year, for municipal and industrial use. The permit requires that construction work be completed by December 1, 1989 and application of the water to the authorized use be completed by December 1, 2005.

On August 25, 2006, the Division mailed a Notice of Proposed Revocation (enclosed) to the permittee, alleging that the permittee has failed to meet the deadlines required by Permit 19873. The permittee has also allegedly failed to comply with other requirements as set forth in the Proposed Revocation Order. On September 7, 2006, the permittee filed a request for hearing on the proposed revocation with the Division.

### KEY ISSUE

Should Permit 19873 be revoked for failure to construct the project and to apply the water to beneficial use?

## **ABOUT THIS HEARING**

In this hearing, the Division of Water Rights will be represented by a prosecution team who will be a party to the hearing. The prosecution team will consist of Kathy Mrowka, Senior Water Resources Control Engineer, and Matthew Bullock, Staff Counsel. The Prosecution Team is separated by an ethical wall from the hearing team, and is prohibited from having *ex parte* communications with members of the hearing team regarding substantive issues and controversial procedural issues within the scope of this hearing.

The hearing team will consist of a hearing officer and the hearing staff (see below). The hearing staff will assist the hearing officer and the other members of the State Water Board in the hearing.

## **HEARING PARTICIPATION**

IF YOU WANT TO TAKE PART IN THIS HEARING, you should carefully read the enclosure entitled "Information Concerning Appearance at Water Right Hearings." As stated in that enclosure, parties intending to present evidence at the hearing must submit a **Notice of Intent to Appear**, which must be **received** by the State Water Board no later than **noon on Friday, December 22, 2006**.

On or about **Thursday, December 28, 2006**, the State Water Board will mail out a list of parties who have indicated intent to participate in the hearing in order to facilitate exchange of testimony, exhibits and witness qualifications. Copies of witnesses' proposed testimony, exhibits, list of exhibits, and qualifications must be **received** by the State Water Board and served on each of the parties who have indicated their intent to appear, no later than **noon on Friday, January 26, 2007**.

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

The enclosed maps show the location of the Joe Serna Jr./California EPA Building and public parking sites in Sacramento. The Joe Serna Jr./Cal EPA Building Coastal hearing room is accessible to persons with disabilities.

Due to enhanced security precautions at the Cal EPA Headquarters Building, all visitors are required to register with security prior to attending any meeting. Visitors must go to the Visitor and Environmental Services Center, located just inside and to the left of the building's public entrance, to sign in and receive a visitor's badge. 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 drivers license, military identification card, or state or federal identification cards. Depending on the size and number of meetings scheduled on any given day, the security check-in could take from three to fifteen minutes. Please allow adequate time to sign in before being directed to your meeting.

## IF YOU HAVE ANY QUESTIONS

State Water Board Member Charles R. Hoppin will preside as the hearing officer over this proceeding. Other Board members may be present during the hearing. State Water Board hearing team members will be Barbara Katz, Senior Staff Counsel; Christy Spector, Environmental Scientist; and Ernie Mona, Water Resources Control Engineer. During the pendency of this proceeding and commencing no later than the issuance of this notice, there shall be no *ex parte* communications between State Water Board members or State Water Board hearing team staff and any of the other participants regarding substantive or controversial procedural matters within the scope of the proceeding. (Gov. Code, §§ 11430.10-11430.80.) Questions regarding non-controversial procedural matters (Gov. Code, § 11430.20, subd. (b)) should be directed to Barbara Katz, at (916) 341-5192; Ernie Mona, at (916) 341-5359; or Christy Spector at (916) 341-5393.



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Song Her  
Clerk to the Board

Date: December 11, 2006

Enclosures

STATE OF CALIFORNIA  
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY  
STATE WATER RESOURCES CONTROL BOARD

**DIVISION OF WATER RIGHTS**

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In the Matter of Permit 19873 (Application 28480)

**City of Rio Vista**

**NOTICE OF PROPOSED REVOCATION**

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SOURCE: Sacramento River

COUNTY: Solano

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You are hereby notified that, pursuant to sections 1410-1410.2 of the California Water Code, the State Water Resources Control Board (State Water Board), Division of Water Rights (Division), is proposing to revoke Permit 19873 because the Permittee has failed to commence, prosecute with due diligence, and complete the work necessary to appropriate water under Permit 19873 and has not made beneficial use of the water in accordance with the permit, the Water Code, and the State Water Board's regulations.

In addition, the Division proposes to revoke Permit 19873 because the Permittee has failed to use beneficially all or part of the water for the purpose for which it was appropriated in accordance with the Water Code.

A. The proposed revocation is based upon the following facts and information:

1. The State Water Board issued Permit 19873 on August 16, 1986. The permit authorizes the City of Rio Vista (Permittee) to divert 9.6 cubic feet per second, not to exceed 3,790 acre-feet per year, from January 1 through December 31 each year from the Sacramento River. The authorized uses are municipal and industrial purposes of use. The permit requires that construction work be completed by December 1, 1989 and that the water be applied to the authorized use by December 1, 2005.
2. Permittee indicates in the Progress Report by Permittee for 2001 (the most recent Progress Report filed with the Division) that construction work has not commenced.
3. On February 8, 2001, the Division requested the Permittee to provide certain information to document that the Permittee was in the process of developing the Sacramento River water source, including a work plan for proceeding with the project. The Division required the work plan to be submitted by January 30, 2002. The Permittee was required to include the following information in the work plan: (a) a description of activities required to complete development of the diversion facilities; (b) a timeline for completion of the planning and approval process; (c) a timeline for completion of the development and construction activities; (d) a list of permits of government approvals, including federal permits, that must be obtained as part of the approval and development process; and (e) evidence that the project is budgeted and is being diligently pursued. Annual updates to the work plan were to be submitted with the annual Progress Report by Permittee. The requested work plan was not submitted.

4. The Permittee submitted a Petition for Extension of Time dated March 6, 2001, which states that no work towards commencing construction has been done. The petition's attachment states that the Permittee has historically relied on groundwater wells and that it filed Application 28480 to provide water supply for new development and as an alternate supply to groundwater. According to the attachment, after the permit was issued in 1986, the Permittee could not justify the capital costs associated with the development of a new diversion facility on the Sacramento River due to slower population growth than projected. The attachment states that the Permittee would immediately begin to evaluate the funding of the project, with a goal of beginning project construction by 2005. The Permittee requested the time to complete beneficial use of water be extended to ten years after the unspecified date of completion of the diversion facilities.
5. Division staff advised the Permittee, by letter dated March 27, 2001, that the Permittee should not proceed with further development envisioned in the time extension petition until an Order approving the petition was issued.
6. The time extension petition was noticed on April 20, 2001 and no protests to approval of the petition were filed.
7. By letter dated November 30, 2001, the Division advised the Permittee that the Division's review of the project's history indicated that construction of the project had not commenced and that the water had not been put to beneficial use under the permit. The Division further noted that the Permittee's annual progress reports did not indicate any progress by the Permittee to implement the project. Additionally, the Division stated that because the Permittee had four more years to complete beneficial use of water, the Division was not required to immediately act on the time extension petition.

The Division's November 30 letter noted that new listings of species under the federal Endangered Species Act and the California Endangered Species Act had occurred since the Permittee adopted a Negative Declaration and final Environmental Assessment for the project on April 17, 1986. The Division advised the Permittee that it would need to prepare a new environmental document and complete necessary endangered species consultations with the appropriate state and federal agencies.

The Division also required submittal of a work plan, by March 29, 2002, to demonstrate the Permittee's determination to proceed with due diligence to complete the proposed project.

The work plan was required to include: (a) a description of the activities required to complete the environmental document and required consultations; (b) a timeline for completion of the environmental document and consultations; (c) a description of the activities required to complete development under the permit; (d) a timeline for completion of these construction and development activities; (e) a list of permits or governmental approvals, including federal permits, that must be obtained as part of the continuing approval and development process; (f) submittal of any correspondence or documentation that demonstrates that the permits or approvals have been received, or are being diligently pursued; (g) a budget approved by the City Council of the City of Rio Vista for completing the environmental document, required consultations, and development activities; and (h) submittal of copies of professional service contracts between the Permittee and consultants retained to complete the above-described studies/work products. Annual updates of the work plan were to be submitted by May 1 of each year with the Progress Reports by Permittee.

8. By letter dated March 25, 2002, the Permittee provided a work plan and timeline indicating that construction would be completed by September 30, 2004, and that water diversion and use would

begin October 1, 2004. The Permittee requested several extensions of time to complete various tasks identified in the March 2002 work plan. By letter dated November 20, 2002, the Division granted an extension to February 4, 2003, and noted that the Permittee's failure to submit the information would result in the initiation of revocation procedures. The Permittee's February 4, 2003 response did not provide any information on when the Permittee intended to complete the tasks necessary to develop the point of diversion and begin beneficial use of water.

9. By letter dated October 28, 2002, the Permittee's agent, MBK Engineers, stated that the Permittee has not commenced water use under Permit 19873.
  10. The Permittee's February 4, 2003 letter states that the Permittee was considering other feasible alternatives to the project proposed under Permit 19873. The Permittee requested the State Water Board not to cancel the permit until the Permittee had information to decide whether to pursue the diversion of water under the permit.
  11. The Division's March 25, 2003 letter states that the Permittee has undertaken no significant actions toward the construction and operation of the project. The Division stated it would not initiate revocation proceedings at that time, but that the Permittee must demonstrate to the Division by the permit expiration date of December 1, 2005, that the Permittee has made a definite decision to proceed with the proposed project in the immediate future, if it had not already done so before that date. In the absence of the Permittee's declaration of a definite decision to proceed (such as a City Council resolution authorizing engineering or environmental contracts) by December 1, 2005, the Division would recommend to the State Water Board that the permit be revoked for lack of due diligence. The Division further stated that "[d]eclarations of a desire to proceed at some indefinite future time will not suffice."
  12. The Permittee's November 30, 2005 letter requests that the Division grant the 2001 time extension petition and allow an extension of time to place water to beneficial use until December 1, 2016. The Permittee states that it is in the process of evaluating its groundwater perennial yields in connection with developing a conjunctive use program that would use the surface water supplies of the Sacramento River under the permit. It attached to the letter a new timetable and other documents, including a resolution by the Rio Vista City Council authorizing its agents to file a request with the State Water Board for a 10-year extension of time to allow the Permittee time to determine the amount of water it would need from the Sacramento River to implement a conjunctive use plan. Notwithstanding the Division's November 30, 2001 letter advising the Petitioner that the 1986 Negative Declaration could not be utilized to support action on the project, the Permittee attached the 1986 Negative Declaration.
- B. Based on the above facts and information, the Division concludes that cause exists for the revocation of Permit 19873 pursuant to Water Code section 1410, subdivision (a):
1. Permittee failed to initiate or complete construction of the project by the December 1, 1989 deadline in the permit. The Division's November 30, 2001 letter advised the Permittee that construction must be completed by December 1, 2005, in lieu of the December 1, 1989 deadline in the permit. The Permittee did not meet either the 1989 or 2005 construction deadline.
  2. Permittee failed to initiate or complete application of water to beneficial use by the December 1, 2005 deadline.
  3. Permittee has failed to commence, prosecute with due diligence, and complete the work necessary to appropriate water under Permit 19873 and has failed to apply to beneficial use all or part of the water authorized for appropriation as contemplated in the permit and in accordance with the Water Code and the regulations of the State Water Board.

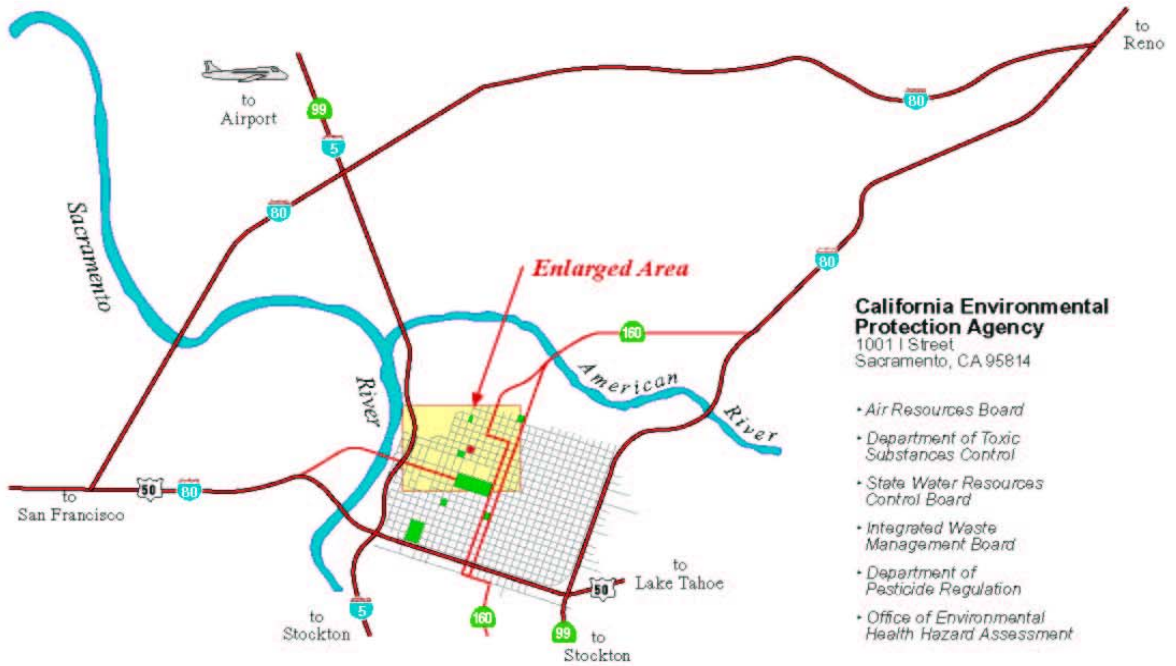
As required by Water Code section 1410.1, you are hereby notified that unless a written request for a hearing, signed by or on behalf of the Permittee, is delivered or mailed to the State Water Board within 15 days after receipt of this notice, the Board may act on the proposed revocation of Permit 19873 without a hearing. You may request a hearing by timely delivering or mailing the request to the State Water Board at the following address: Division of Water Rights, P.O. Box 2000, 1001 I Street, Sacramento, CA 95812-2000.

STATE WATER RESOURCES CONTROL BOARD

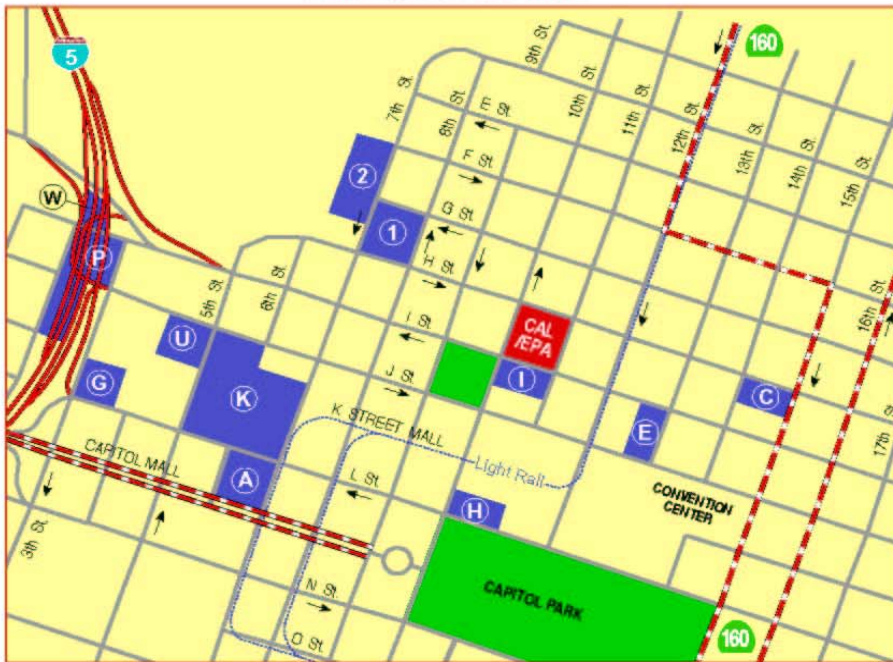
*ORIGINAL SIGNED BY*

*Victoria A. Whitney, Chief  
Division of Water Rights*

Dated: August 25, 2006



**Parking Lot Locations**



**Parking Lot Locations**

- Lot 1 (7th & G St.)
- Lot 2 (7th & G St.)
- Lot A (7th & Capitol)
- Lot C (14th & H St.)
- Lot G (3rd & L)
- Lot H (10th & L)
- Lot I (10th & I, 11th & I)
- Lot K (6th & J/L, 7th & K)
- Lot P (2nd & I)
- Lot U (5th & J)
- Lot W (2nd & I St.)



## Interested Party List

City of Rio Vista  
c/o MBK Engineers  
2450 Alhambra Boulevard, 2<sup>nd</sup> Floor  
Sacramento, CA 95817

Matthew Bullock (Prosecution Team)  
State Water Resources Control Board  
Office of Chief Counsel  
P.O. Box 100  
Sacramento, CA 95812

City of Rio Vista  
c/o George Bayse  
Downey, Brand Attorneys  
555 Capitol Mall, 10th Floor  
Sacramento, CA 95814-4686

**Standard Hearings Mailing List  
City of Rio Vista Proposed Revocation Hearing A028480**

Tony Francois  
California Farm Bureau Federation  
1127 11th Street, Suite 626  
Sacramento, CA 95814

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

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

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

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

Bartkiewicz, Kronick  
& Shanahan  
c/o Alan B. Lilly  
1011 Twenty-Second Street, Suite 100  
Sacramento, CA 95816-4907

California Fisheries Restoration Foundation  
c/o Martin Seldon  
1146 Pulora Court  
Sunnyvale, CA 94087-2331

**Standard Hearings Mailing List (continued)**  
**City of Rio Vista Proposed Revocation Hearing A028480**

City Attorney's Office – PUC Team  
City and County of San Francisco  
1390 Market Street, Suite 418  
San Francisco, CA 94102

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

Nancee Murray, Senior Staff Counsel  
California Department of Fish & Game  
Office of General Counsel  
1416 9th Street, 12<sup>th</sup> Floor  
Sacramento, CA 95814

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

California Environmental  
Protection Agency  
c/o Linda S. Adams  
Secretary for Environmental Protection  
1001 I Street, 25<sup>th</sup> Floor  
Sacramento, CA 95814

James Peters  
Peters Shorthand Reporting Corporation  
3336 Bradshaw Road, Suite 240  
Sacramento, CA 95827

City of Los Angeles  
c/o Mr. David R. Pettijohn  
Department of Water & Power  
Water Resources Business Unit  
111 North Hope Street, Room 1460  
Los Angeles, CA 90012

**Standard Hearings Mailing List (continued)**  
**City of Rio Vista Proposed Revocation Hearing A028480**

Whitnie Henderson  
Association of California Water Agencies  
910 K Street, Suite 100  
Sacramento, CA 95814-3577

Pamela Creedon  
Executive Officer  
RWQCB, Central Valley Region (5S)  
11020 Sun Center Drive #200  
Rancho Cordova, CA 95670-6114

California Department of Fish and Game  
Sacramento Valley and Central Sierra Region 2  
1701 Nimbus Road, Suite A  
Rancho Cordova, CA 95670

Mr. Robert W. Floerke, Regional Manager  
California Dept. of Fish and Game  
Central Coast Region 3  
P.O. Box 47  
Yountville, CA 94599

## INFORMATION CONCERNING APPEARANCE AT WATER RIGHT HEARINGS

### HEARING REGARDING THE PROPOSED REVOCATION OF PERMIT 19873 (APPLICATION 28480) OF THE CITY OF RIO VISTA

The following procedural requirements will apply and will be strictly enforced for purposes of the above-mentioned hearing.

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

Each party has the right to call and examine witnesses, introduce exhibits, cross-examine opposing witnesses on any matter relevant to the issues even if that matter was not covered in the direct examination, impeach any witness, rebut adverse evidence, and subpoena, call and examine an adverse party or witness as if under cross-examination. The hearing officer may extend these rights to a non-party participant or may limit the participation of a non-party participant.

Any requests for exceptions to the procedural requirements specified in this notice shall be filed in writing. To provide time for other participants to respond, the hearing officer will rule on procedural requests filed in writing no sooner than fifteen days after receiving the request, unless an earlier ruling is necessary to avoid disrupting the hearing.

2. **PARTIES:** The parties are the City of Rio Vista, the Division of Water Rights' Prosecutorial Team, and any other persons or entities authorized by the hearing officer to participate in the hearing as parties. Only parties and other participants who are authorized by the hearing officer will be allowed to present evidence. A person or entity that appears and presents only a policy statement will not be allowed to participate in other parts of the hearing. The rules for policy statements are discussed below.
3. **NOTICE OF INTENT TO APPEAR:** Participants in this hearing must file two copies of a Notice of Intent to Appear, which must be **received** by the State Water Board no later than **noon on Friday, December 22, 2006**. Failure to submit a Notice of Intent to Appear and exhibits in a timely manner may be interpreted by the State Water Board as intent not to appear.

The Notice of Intent to Appear must state: (1) the name and address of the participant, (2) the name of each witness who will testify on the participant's behalf, (3) a brief description of the proposed testimony, and (4) an estimate of the time (not to exceed 20 minutes) that the witness will need to present a brief oral summary of the witness' testimony. The witness' testimony must be submitted in writing as described in Section 4 below. Participants who do not intend to present a case-in-chief but who may wish to cross-examine witnesses or present rebuttal should so indicate on the Notice of Intent to Appear. Participants who decide not to present a case-in-chief after having submitted a Notice of

Intent to Appear should notify the State Water Board and the other participants as soon as possible.

In order to expedite the exchange of information and lower the cost of participating in the hearing, the State Water Board encourages participants to submit written policy statements, written opening statements, written testimony, exhibits, and an Exhibit Identification Index to the State Water Board in electronic form. In addition, participants may exchange the foregoing documents in electronic form. Hearing participants are not required to submit these documents in electronic form or accept electronic service; however, those who choose to submit these documents electronically must comply with the requirements described in section 5, below. If you are willing to accept electronic media service in lieu of receiving hard copies of items, please check the appropriate box on the Notice of Intent to Appear.

The State Water Board will mail a service list of parties to exchange information to each hearing party who has submitted a Notice of Intent to Appear. Hearing participants who intend to make only policy statements are not required to exchange information and will not receive copies of written testimony or exhibits from the parties. The service list will indicate which participants agreed to accept electronic service. If there is any change in the hearing schedule, only those persons or entities that have filed a Notice of Intent to Appear will be informed of the change.

4. **WRITTEN TESTIMONY AND OTHER EXHIBITS:** Exhibits include written testimony, statements of qualifications of expert witnesses, and other documents to be used as evidence. Each participant proposing to present testimony on factual or other evidentiary matters at the hearing shall submit such testimony in writing.<sup>1</sup> Written testimony shall be designated as an exhibit, and must be submitted with the other exhibits. Oral testimony that goes beyond the scope of the written testimony may be excluded. A participant who proposes to offer expert testimony must submit an exhibit containing a statement of the expert witness's qualifications.

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

With its exhibits, each participant must submit to the State Water Board and serve on the other participants a completed Exhibit Identification Index. If possible, each participant should submit to the State Water Board and serve on the other participants an electronic copy, as well as a paper copy of the Exhibit Identification Index. Please see Section 5 for details regarding electronic submissions.

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<sup>1</sup> The hearing officer may make an exception to this rule if the witness is adverse to the participant presenting the testimony and is willing to testify only in response to a subpoena or alternative arrangement. In such a case, the hearing officer may allow presentation of the oral direct testimony without requiring written testimony.

A statement of service with manner of service indicated shall be filed with each participant's exhibits. The exhibits and indexes for this hearing, and a statement of service, must be **received** by the State Water Board by **noon on Friday, January 26, 2007**, and served on the other participants on or before that date.

The following requirements apply to exhibits:

- a. Exhibits based on technical studies or models shall be accompanied by sufficient information to clearly identify and explain the logic, assumptions, development, and operation of the studies or models.
  - b. The hearing officer has discretion to receive in evidence by reference relevant, otherwise admissible, public records of the State Water Board and documents or other evidence that have been prepared and published by a public agency, provided that the original or a copy was in the possession of the State Water Board before the notice of the hearing is issued. (Cal. Code Regs., tit. 23, § 648.3.) A participant offering an exhibit by reference shall advise the other participants and the State Water Board of the titles of the documents, the particular portions, including page and paragraph numbers, on which the participant relies, the nature of the contents, the purpose for which the exhibit will be used when offered in evidence, and the specific file folder or other exact location in the State Water Board's files where the document may be found.
  - c. A participant seeking to enter in evidence as an exhibit a voluminous document or database may so advise the other participants prior to the filing date for exhibits, and may ask them to respond if they wish to have a copy of the exhibit. If a participant waives the opportunity to obtain a copy of the exhibit, the participant sponsoring the exhibit will not be required to provide a copy to the waiving participant. Additionally, such exhibits may be submitted to the State Water Board in electronic form, using a file format readable by Microsoft Office 2000 software.
  - d. Exhibits that rely on unpublished technical documents will be excluded unless the unpublished technical documents are admitted as exhibits.
5. **ELECTRONIC SUBMISSIONS:** Participants are encouraged to submit the following documents to the State Water Board in electronic form: written opening statements, written policy statements, written testimony, exhibits, and Exhibit Identification Indexes. In addition, the foregoing documents may be served electronically on those participants who have agreed to accept electronic service. Paper copies of all other documents must be submitted to the State Water Board and served on the other parties, unless the hearing officer specifies otherwise.

Any documents submitted or served electronically must be in Adobe™ Portable Document Format (PDF), except for Exhibit Identification Indexes, which must be in a version supported by Microsoft Excel or Word. Electronic submittals to the State Water Board of documents less than 15 megabytes (incoming mail server attachment limitation) in total size may be sent via electronic mail to: [wrhearing@waterboards.ca.gov](mailto:wrhearing@waterboards.ca.gov) with a subject of "City of Rio Vista Permit 19873 Proposed Revocation Hearing". Electronic submittals to the State Water Board of documents greater than 15 megabytes in total size should be sent by regular mail in PDF format on compact disk (CD™) media. Electronic service on

participants shall be in the same format as submittals to the State Water Board, and should be submitted to the other participants by mail on CD.

Participants who agree to electronic service may request that specific documents be provided to them in paper copy. Requests should be made to the participant who submitted the document, not to the State Water Board. Participants who receive such a request shall provide a paper copy of the requested document within five days of the date the request is received. The State Water Board will post a list of all exhibits submitted for the hearing on its website at: <http://www.waterrights.ca.gov/Hearings/riovista.html>.

6. **ORDER OF PROCEEDING:** The State Water Board member serving as the hearing officer will follow the Order of Proceedings specified in California Code of Regulations, title 23, section 648.5. Participants should take note of the following additional information regarding the major hearing events.
  - a. **Policy Statements:** Pursuant to California Code of Regulations, title 23, section 648.1, subdivision (d), the State Water Board will provide an opportunity for presentation of non-evidentiary policy statements or comments by interested persons who are not participating in the hearing. Policy statements will be heard at the start of the hearing, immediately after a hearing officer identifies the parties and other participants. Policy statements are subject to the following provisions in addition to the regulation:
    - i. Policy statements are not subject to the prehearing requirements noted above for testimony or exhibits, except that persons wishing to make policy statements are requested to file a Notice of Intent to Appear, indicating clearly an intent to make only a policy statement.
    - ii. The State Water Board requests that policy statements be provided in writing before they are presented. Please see Section 5, above, for details regarding electronic submittal of policy statements. Oral summaries of the policy statements will be limited to five minutes or such other time as established by the hearing officer.
  - b. **Presentation of Cases-In-Chief:** Each participant may present a case-in-chief addressing the key issues identified in the hearing notice. The case-in-chief will consist of any opening statement provided by the participant, oral testimony, introduction of exhibits, and cross-examination of the participant's witnesses. The hearing officer may allow redirect examination and recross examination. The hearing officer will decide whether to accept the participant's exhibits in evidence upon a motion of the participant after the case-in-chief has been completed.
    - i. **Opening Statements:** At the beginning of a case-in-chief, the participant or the participant's attorney may make an opening statement briefly and concisely stating the objectives of the case-in-chief, the major points that the proposed evidence is intended to establish, and the relationship between the major points and the key issues. Oral opening statements will be limited to 20 minutes per participant. A participant may submit a written opening statement.



Please see section 5, above, for details regarding electronic submittal of written opening statements. Any policy-oriented statements by a participant should be included in the participant's opening statement.

- ii. **Oral Testimony:** All witnesses presenting testimony shall appear at the hearing. Before testifying, witnesses shall swear or affirm that the written and oral testimony they will present is true and correct. Written testimony shall not be read into the record. Written testimony affirmed by the witness is direct testimony. Witnesses will be allowed up to 20 minutes to summarize or emphasize their written testimony on direct examination.<sup>2</sup> Each participant will be allowed up to two hours total to present all of its direct testimony.<sup>3</sup>
  
- iii. **Cross-Examination:** Cross-examination of a witness will be permitted on the party's written submittals, the witness' oral testimony, and other relevant matters. If a participant presents multiple witnesses, a hearing officer will decide whether the participant's witnesses will be cross-examined as a panel. Cross-examiners initially will be limited to one hour per witness or panel of witnesses. The hearing officer has discretion to allow additional time for cross-examination if there is good cause demonstrated in an offer of proof. Any redirect examination and recross examination permitted by a hearing officer will be limited to the scope of the cross-examination and the redirect examination, respectively. Witnesses may be cross-examined on relevant subjects that are not covered in the direct testimony. (Gov. Code, § 11513, subd. (b).) Ordinarily, only a participant or the participant's representative will be permitted to examine a witness, but a hearing officer may allow a participant to designate a person technically qualified in the subject being considered to examine a witness. State Water Board members and the State Water Board's counsel may ask questions at any time, and the State Water Board members and staff may cross-examine any witness.
  
- c. **Rebuttal:** After all participants have presented their cases-in-chief and their witnesses have been cross-examined, the hearing officer will allow participants to present rebuttal evidence. Rebuttal evidence is new evidence used to rebut evidence presented in another participant's case-in-chief. Rebuttal testimony and exhibits need not be submitted prior to the hearing. Rebuttal evidence is limited to evidence that is responsive to evidence presented in a case-in-chief, and it does not include evidence that should have been presented during the presenter's case-in-chief. It also does not include repetitive evidence. Cross-examination of rebuttal evidence will be limited to the scope of the rebuttal evidence.
  
- d. **Closing Statements and Legal Arguments:** At the close of the hearing or at other times if appropriate, a hearing officer may allow oral arguments or set a schedule for filing briefs or closing statements. If a hearing officer authorizes the participants to file briefs, five copies of each brief shall be submitted to the State Water Board, and one

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<sup>2</sup> The hearing officer may allow additional time for the oral direct testimony of the witness if the witness is adverse to the participant presenting the testimony and the hearing officer is satisfied that the participant could not produce written direct testimony for the witness.

<sup>3</sup> The hearing officer may, for good cause, approve a party's request to use more than two hours total to present direct testimony during the party's case-in-chief.

copy shall be served on each of the other participants on the service list. A participant shall not attach a document of an evidentiary nature to a brief unless the document is at the time in the evidentiary hearing record or is the subject of an offer of the document in evidence. Every participant filing a brief shall file a statement of service with the brief, indicating the manner of service.

- e. **Large Format Exhibits:** Participants submitting large format exhibits such as maps, charts, and other graphics shall provide the original for the hearing record in a form that can be folded to 8 ½ x 11 inches. Alternatively, participants may supply, for the hearing record, a reduced copy of a large format original if it is readable.
7. **EX PARTE CONTACTS:** During the pendency of this proceeding, commencing no later than the issuance of the Notice of Hearing, there shall be no *ex parte* communications between either State Water Board members or State Water Board hearing team staff and any of the other participants regarding substantive issues within the scope of the proceeding. (Gov. Code, §§ 11430.10-11430.80.) Communications regarding non-controversial procedural matters are permissible, and should be directed to the State Water Board staff attorney on the hearing team, not State Water Board members. (Gov. Code, § 11430.20, subd. (b).) A memorandum regarding *ex parte* communications is available upon request or from our website at [http://www.waterboards.ca.gov/water\\_laws/index.html](http://www.waterboards.ca.gov/water_laws/index.html)
8. **RULES OF EVIDENCE:** Evidence will be admitted in accordance with Government Code section 11513. Hearsay evidence may be used to supplement or explain other evidence, but over timely objection shall not be sufficient in itself to support a finding unless it would be admissible over objection in a civil action.
9. **SUBMITTALS TO THE STATE WATER BOARD:** Notices of Intent to Appear, written testimony and other exhibits submitted to the State Water Board should be addressed as follows:

Division of Water Rights  
State Water Resources Control Board  
P.O. Box 2000, Sacramento, CA 95812-2000  
Attn: Christy Spector  
Phone: (916) 341-5393  
Fax: (916) 341-5400  
Email: [cspector@waterboards.ca.gov](mailto:cspector@waterboards.ca.gov)

With Subject of "City of Rio Vista Permit 19873 Proposed Revocation Hearing"

**NOTICE OF INTENT TO APPEAR**

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

**CITY OF RIO VISTA PERMIT 19873 PROPOSED REVOCATION HEARING**  
**scheduled for**  
**Wednesday, February 21, 2007**

- I/we wish to protest the petition.
- I/we intend to present a policy statement only.
- I/we intend to participate by cross-examination or rebuttal only.
- I/we agree to accept electronic service of hearing-related materials.
- I/we plan to call the following witnesses to testify at the hearing.

NAME	SUBJECT OF PROPOSED TESTIMONY	ESTIMATED LENGTH OF DIRECT TESTIMONY	EXPERT WITNESS (YES/NO)

(If more space is required, please add additional pages or use reverse side.)

Name, Address, Phone Number and Fax Number of Attorney or Other Representative

Signature: \_\_\_\_\_ Dated: \_\_\_\_\_

Name (Print): \_\_\_\_\_

Mailing Address: \_\_\_\_\_  
 \_\_\_\_\_

Phone Number: ( ) \_\_\_\_\_ Fax Number: ( ) \_\_\_\_\_

E-mail Address: \_\_\_\_\_

