

State Water Resources Control Board

Division of Water Rights

901 P Street • Sacramento, California 95814 • (916) 657-2203

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NOTICE OF PUBLIC HEARING

Petition to Revise

Declaration of Fully Appropriated Stream Systems

for an Unnamed Stream Tributary to

San Luis Obispo Creek

9:00 a.m., Wednesday, June 14, 2000

State Water Resources Control Board

Paul R. Bonderson Building

901 P. Street, First Floor Hearing Room

Sacramento, CA 95184

SUBJECT OF HEARING

This hearing is scheduled to receive evidence regarding a petition to revise the Declaration of Fully Appropriated Stream Systems (Declaration) for an unnamed stream tributary to San Luis Obispo Creek in San Luis Obispo County.

BACKGROUND

Pursuant to Water Code sections 1205 through 1207, the SWRCB has adopted and periodically revised a declaration designating stream systems that are determined to be fully appropriated either year-round or during specified months. Placing a stream on the Declaration precludes the SWRCB from accepting any application to appropriate water from a specified stream system where the proposed appropriation is inconsistent with the conditions contained in the

Declaration. The SWRCB has determined that the San Luis Obispo Creek system in San Luis Obispo County is fully appropriated throughout the year from its mouth at the Pacific Ocean upstream, including all tributaries where hydraulic continuity exists. The San Luis Obispo Creek system was included in the original Declaration adopted by SWRCB Order WR 89-25, and it remains listed on the most recent revised Declaration adopted by SWRCB Order WR 98-08.

In accordance with California Code of Regulations, title 23, section 871, the SWRCB may revoke or revise the Declaration either on its own motion or on a petition of an interested person. The SWRCB may revise a condition of the Declaration to allow for the acceptance for filing, and for processing, of an application to appropriate water from a stream system previously declared to be fully appropriated. On July 20, 1999, the SWRCB received from Mr. Dan Dixon a petition and accompanying hydrologic data requesting that the Declaration be revised to allow for acceptance and processing of an application to appropriate water from an unnamed tributary to San Luis Obispo Creek.

Mr. Dixon submitted, on behalf of Doris Dixon, an application to appropriate water. (Doris Dixon is currently in the process of transferring proposed Application No. X002920 and Stockpond Certificate Nos. 3093 and 3094 to Dan Dixon.) The water right application requests the right to store up to 5.87 acre-feet of water per annum (afa) in three reservoirs for the purpose of storage for stockwatering and irrigation of 4 acres of permanent crops. The collection period would take place between December 1 and May 1. There are two Stockpond certificates within the project area and a third pending. The two existing Stockpond certificates allow the certificate holder to collect and hold in storage 1.1 afa of water for stockwatering, including domestic and recreational use which is incidental to stockwatering use. The pending stockpond certificate requests an additional 3.5 afa. The existing three stockponds will serve as the storage reservoirs, and no additional facilities will be constructed for storage.

The Chief of the Division of Water Rights has reviewed the petition and hydrologic information provided by Mr. Dixon and has concluded that there is reasonable cause to conduct a hearing on the question of whether the Declaration should be revised to allow for acceptance and processing of Mr. Dixon's water right application. The hearing on the petition to revise the Declaration is not a hearing on the merits of the water right application, nor would approval of the petition require a finding that water is available in the quantity or during the entire season of diversion specified in the application. Rather, the hearing is limited to the purpose of determining if the Declaration should be revised to allow the SWRCB to process Mr. Dixon's water right application. Approval of the petition would allow the SWRCB to accept for filing Mr. Dixon's water right application and to begin processing the application in accordance with applicable provisions of Water Code section 1200 et seq.

KEY ISSUES

1. Should the SWRCB revise the Declaration to allow the Division of Water Rights to accept and process Mr. Dixon's water right application, in whole or in part?
2. Has there been a change in circumstances since the San Luis Obispo Creek system was included in the Declaration?
3. Is there information supporting a determination that there is unappropriated water in the

San Luis Obispo Creek system during the season applied for to justify revising the Declaration for purposes of accepting and processing the application, in whole or in part?

HEARING PARTICIPATION

Persons who wish to participate in this hearing should carefully read the enclosure entitled "[Information Concerning Appearance at Water Right Hearing.](#)" 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 Board on or before **4:00 p.m. on Wednesday, May 17, 2000.**

PARKING AND ACCESSIBILITY

The [enclosed map](#) shows the location of the Paul R. Bonderson Building in Sacramento. Public parking is available in the State Garage on 10th Street between O and P Streets, in metered spaces on area streets, and in the public parking garages on L Street between 10th and 11th Streets and on P Street between 11th and 12th Streets.

The Paul R. Bonderson Building first-floor hearing room is accessible to persons with disabilities.

IF YOU HAVE ANY QUESTIONS

Questions concerning this notice may be directed to Jean McCue of the Division of Water Rights at (916) 657-2203 (FAX # (916) 657-1485) or to Erin Mahaney of the Office of Chief Counsel at (916) 657-1472.

Signed By: ,

Maureen Marché

Administrative Assistant to the Board

Enclosure

Date: March 10, 2000

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INFORMATION CONCERNING APPEARANCE AT WATER RIGHTS HEARINGS

The following procedural requirements will apply to this hearing and will be strictly enforced by the State Water Resources Control Board (SWRCB). Failure to submit witness information and exhibits in a timely manner may be interpreted by the SWRCB as intent not to appear.

1. **PARTIES:** A person who wishes to participate in the hearing as a party and present evidence must submit a notice of intent to appear, written testimony, and exhibits, in accordance with the requirements set forth below with a request to be designated a party to the hearing. Hearing parties will be required to exchange exhibits with other hearing parties.

A person who wishes only to present a policy statement, either orally or in writing, will be considered an interested person and not a party to the hearing. A person who wishes to present a policy statement is requested to file a Notice of Intent to Appear and follow the requirements governing policy statements (see item 6a below).

2. **NOTICE OF INTENT TO APPEAR:** Each party who intends to participate must submit to the SWRCB and each of the other parties a written [Notice of Intent to Appear](#) (notice). If there is any change in the hearing schedule, only those persons who have filed a notice will be informed of the change.

The notice must include the name and address of the party or interested person, or the name of the party's or interested person's representative. An interested person should clearly indicate on the notice his or her intent to make a policy statement only. A person who wishes to participate as a party must also include the name of each witness who will testify on the party's behalf, together with a description of the proposed testimony and the estimated amount of time required by the witness to present an oral summary of his or her testimony, which must be submitted in writing as described in item 3, below. The attached form may be used.

Parties must submit six copies of the notice in time for it to be received by the SWRCB by **4:00 p.m. on Wednesday, May 17, 2000**. Following receipt of the notices, on or about **May 19, 2000**, the SWRCB will compile and mail to each party who has indicated an intent to present evidence a list of parties to exchange information. Only parties who have submitted a notice will be included on the list of parties to exchange information. No later than **Wednesday, May 31, 2000**, each party shall serve a copy of its notice on each of the parties identified on the list.

3. **WRITTEN TESTIMONY:** Each party proposing to present testimony on factual or other evidentiary matters at the hearing must submit the testimony in writing. Oral testimony that goes beyond the scope of written testimony may be excluded.

4. **EXHIBITS:** Each party shall submit six copies of its exhibits to the SWRCB and serve one copy on each of the other parties included on the list of parties to exchange information. For each expert witness, a statement of qualifications should be attached. Each party shall complete the enclosed [Exhibit Identification Index](#) and submit it with its exhibits. The status

as evidence column will be completed during the hearing. The SWRCB will post a list of all exhibits submitted for the hearing on its website at <http://www.waterrights.ca.gov/hearings>. To facilitate this, parties are also requested to submit their Exhibit Identification Lists in electronic format either on a disk or by e-mail to wrhearings@waterrights.swrcb.ca.gov with the subject heading of "Dixon". If submitted electronically, please use Microsoft Word 97 format. The written testimony of each witness and the statements of qualifications for expert witnesses are considered exhibits and shall be designated as such. A statement of service with the manner of service indicated shall be filed with each party's exhibits. The Exhibit Identification Index, exhibits, and statement of service must be received by the SWRCB **no later than 4:00 p.m. on Wednesday, May 31, 2000**, and served on the other parties by mail on or before that date.

Proposed exhibits are subject to the following requirements:

- a. Information 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. In accordance with California Code of Regulations, title 23, section 648.3, public records of the SWRCB and documents or other evidence that have been prepared and published by a public agency, if otherwise admissible, may be submitted as exhibits by reference provided that the original or a copy is in the possession of the SWRCB.
 - c. If documents are submitted as exhibits by reference, the parties offering such documents shall advise the other parties with whom exhibits must be exchanged of the titles of the documents, the particular portions on which they rely, the nature of the contents, the purpose for which the exhibit will be used when offered into evidence, and the specific file folder or other exact location in SWRCB's files where the document(s) may be found.
 - d. Exhibits that rely on unpublished technical documents will be excluded unless the unpublished technical documents are admitted as exhibits.
5. **RULES OF EVIDENCE:** Evidence will be admitted in accordance with Government Code section 11513.
6. **ORDER OF PROCEEDING:** The hearing will be conducted in accordance with [California Code of Regulations, title 23, section 648.5](#) and the following specific rules.
- a. **POLICY STATEMENTS:** Pursuant to California Code of Regulations, title 23, section 648.1, subdivision (d), the SWRCB will provide an opportunity for presentation of policy statements or comments by interested persons who are not participating as parties in the proceeding. A policy statement is a non-evidentiary statement that may include the speaker's policy views or non-expert analysis of evidence that already has been presented. Policy statements will be heard first, beginning at **9:00 a.m. on Wednesday, June 14, 2000**.

Policy statements are not subject to the pre-hearing requirements for exhibits set forth above. All persons wishing to make policy statements, however, are

requested to file a Notice of Intent to Appear on the enclosed form indicating clearly an intent to make only a policy statement, or to call Ms. Jean McCue at (916) 657-2203, by **4:00 p.m. on Wednesday, May 17, 2000.**

Persons making policy statements will not be sworn or asked to affirm the truth of their statements, and they must not attempt to use their statements to present evidence of facts, either orally or by introduction of written exhibits. At the discretion of the hearing officer, questions may be addressed to persons making policy statements for the purpose of clarifying their statements. Persons making policy statements, however, are not subject to cross-examination.

Time limitations of five minutes or less will be imposed on policy statements. Persons making policy statements are encouraged to have six written copies of their statement available at the time they speak for distribution to the SWRCB.

b. OPENING STATEMENTS: All parties who present evidence in the hearing may make an opening statement. Oral presentation of an opening statement will be limited to 20 minutes for each party. An opening statement may also be submitted in writing. Parties should use their opening statements to explain the objectives of their case, the major points that will be made, and the relationship between the major points and the key issues. An opening statement may include any policy-oriented statements that the party wishes to make.

c. PRESENTATION OF EACH PARTY'S CASE-IN-CHIEF: Each party shall present one case-in-chief addressing the key issues identified in the hearing notice. All written testimony and other exhibits shall be introduced during the presentation. Oral presentation of the direct testimony of each witness shall be limited to a maximum of 20-minutes per witness, not to exceed a total of two hours for all witnesses presented by a party. The time allowed for the presentation of a party's case-in-chief may be extended upon a showing of good cause. The hearing officer will limit presentation of redundant testimony.

All witnesses presenting testimony must appear at the hearing. Each witness shall identify his or her written testimony, affirm that the testimony is true and correct, and briefly summarize the major points in the testimony. Written testimony should not be read into the record. The written testimony shall be treated as direct testimony in its entirety.

d. CROSS-EXAMINATION: Immediately following the presentation of each party's case-in-chief, the party's witnesses will be subject to cross-examination by the other parties, SWRCB members, and SWRCB staff. Witnesses may be cross-examined on subjects that were not covered in their direct testimony.

If a party presents multiple witnesses on a given subject area or closely related subject areas, those witnesses may be subject to cross-examination as a panel, at the discretion of the hearing officer. Cross-examination will be limited to 20-minutes per witness or panel of witnesses, for each party conducting cross-examination. The time allowed for cross-examination will be extended upon a showing of good cause demonstrated in an offer of

proof. Redirect examination and recross examination may be permitted for good cause at the discretion of the hearing officer.

e. **REBUTTAL EVIDENCE:** Parties will have the opportunity to present rebuttal evidence. Parties must not use the opportunity to present rebuttal evidence to attempt to present new evidence that should have been included in the case-in-chief, or to present repetitive evidence. All rebuttal evidence will be subject to cross-examination.

f. **CLOSING ARGUMENTS:** Oral closing statements shall not be made. The hearing officer may provide an opportunity for submission of written closing statements or legal briefs following the close of the hearing. If the hearing officer provides this opportunity, six copies of any closing statements or legal briefs shall be submitted to the SWRCB and one copy shall be mailed to each of the parties required to exchange information for this hearing. The schedule for submission of closing statements and legal briefs will be decided by the hearing officer at the close of the hearing.

7. **EX PARTE COMMUNICATION:** During the pendency of the proceeding, commencing no later than the issuance of the Notice of Hearing, there will be no *ex parte* communications between SWRCB members or staff and any of the parties or interested persons regarding substantive issues within the scope of the proceeding. Communications regarding noncontroversial procedural matters will be permitted, but ordinarily should be directed to SWRCB staff and not to SWRCB members.

8. **CONDUCT OF PROCEEDING GENERALLY:** The proceeding will be conducted as provided herein and in accordance with the procedures for adjudicative proceedings set forth in California Code of Regulations, title 23, sections 648-648.8, 649.6, and 760.

Materials submitted to the SWRCB should be addressed as follows:

Division of Water Rights

State Water Resources Control Board

P.O. Box 2000

Sacramento, CA 95812-2000

Attn: Jean McCue

Phone: (916) 657-2203

Fax: (916) 657-1485

Email: wrrhearing@waterrights.swrcb.ca.gov

With Subject of "Dixon"

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STAFF EXHIBITS OFFERED INTO EVIDENCE

1. SWRCB Staff Exhibits: The following items will be offered, by reference, as staff exhibits at the hearing:

1. Applications, Permits, Licenses, water right decisions, water right orders, and reports of permittee or licensee for Application Nos. 3022, 12586, 13068, 23852, 23855, 24914, 26716, and 28995.
2. Statements of Water Diversion and Use Nos. 618, 619, 620, 5286, 7789, 7790, 9027, 9028, 9049, 9475, 9983, 10894, 13191, 13500, 13533, and 13732 and supplemental statements.
3. Stockpond Certificate Nos. 3093, 3094, 3095, 4130 and XC000753.
4. All files related to proposed Application No. X002920.
5. Treated Wastewater Change Petition No. 12.
6. Topographic Maps published by the United States Geological Survey covering the area under consideration.
7. United States Geological Survey, "Water Resource Data, California" for the period of published record for the San Luis Obispo Creek watershed.
8. U.S. Department of Commerce, National Oceanic and Atmospheric Administration, "Climatological Data of California" for the period of published record for the area under consideration.
9. "Declaration of Fully Appropriated Stream Systems," SWRCB Order WR 98-08 (November 19, 1998) and accompanying documents.

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NOTICE OF INTENT TO APPEAR

_____, plans to participate in the water right hearing regarding:

(name of party or participant)

FULLY APPROPRIATED STREAM PETITION – SAN LUIS OBISPO CREEK

Scheduled for

Wednesday, June 14, 2000

_____, I/we intend to present a policy statement only:

_____, 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

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