



**Winston H. Hickox**  
*Secretary for  
Environmental  
Protection*

# State Water Resources Control Board

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## Executive Office

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**Gray Davis**  
*Governor*

November 2, 2000

Victor Valley Wastewater Reclamation  
Authority  
c/o Mr. Andrew M. Hitchings  
Somach, Simmons & Dunn  
400 Capitol Mall, Suite 1900  
Sacramento, CA 95814-4407

California Department of Fish and Game  
c/o Ms. Nancee Murray  
Legal Office  
1416 9<sup>th</sup> Street, 12<sup>th</sup> Floor  
Sacramento, CA 95814

Dear Mr. Hitchings and Ms. Murray:

### VICTOR VALLEY WASTEWATER RECLAMATION AUTHORITY'S PETITION FOR CHANGE – RULING ON PROCEDURAL MATTERS AND NOTICE OF CHANGE IN HEARING SCHEDULE

The purpose of this letter is to rule as presiding officer in the above captioned adjudicative proceeding on a number of procedural matters that have come to my attention. First, by letter faxed on October 31, 2000, the California Department of Fish & Game (DFG) requested that the hearing on Victor Valley Waste Water Reclamation Authority's (VWRA) change petition, previously scheduled for December 4-6, be postponed until February, 2001, in order to accommodate a witness who is recovering from surgery. In the alternative, DFG requested a one-week extension of time to file written testimony. This letter also addresses VWRA's request for dismissal of protests and objection to presentation of evidence by Southern California Water Company (SCWC) and Apple Valley Ranchos Water Company (AVRWC).

I am not persuaded that the hearing should be postponed, but DFG's request for an extension of time to file written testimony should be granted. DFG requested an extension because its expert witness, Mr. Thomas Bilhorn, had surgery on October 16, 2000, and will not be well enough to complete his testimony until December 1, 2000. As VWRA noted in its November 1, 2000 E-mail response to DFG's request, however, DFG has known since late July of this year that a hearing was tentatively scheduled for December. The State Water Resources Control Board (SWRCB) set the dates for this hearing in its notice dated October 6, 2000. DFG has had ample time to arrange for a substitute expert witness to replace Mr. Bilhorn. In addition, the hearing in this case has already been delayed pending the outcome of the Mojave River Adjudication.

Although the hearing will not be postponed until February, I wish to take this opportunity to inform the parties that the hearing will be postponed one day, and will commence on December 5, 2000, at 10:00 a.m., in order to accommodate a special Board meeting that will be held on December 4. The hearing will continue on December 6, at 9:00 a.m., if necessary. If

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*California Environmental Protection Agency*

additional hearing days are needed, they will be set at the time of the hearing. The hearing will take place in the First-Floor Hearing Room in the Paul R. Bonderson Building, 901 P Street, Sacramento, California.

DFG's request for a one-week extension to file written testimony is granted. All parties will have until November 13, 2000, to file written testimony and other exhibits. The extension will give DFG time to find a replacement for Mr. Bilhorn. No party, including VVWRA, has objected to granting the extension. The parties, SWRCB staff, and I will still have three weeks to review submittals before the hearing.

On October 27, 2000, VVWRA requested the dismissal of the following protestants who did not file a Notices of Intent to Appear in this proceeding: James and Naomi Rossi, Mojave Water Agency, Joseph Vail, Jean DeBlasis as Trustee of Kemper Campbell Ranch, Baldy Mesa Water District, Silver Lakes Association, Gary Thrasher, and Newton T. Bass Trust. One protestant, Joseph Vail, responded and filed a late Notice of Intent to Appear.

I agree that the protests of those persons who did not file a Notice of Intent to Appear should be dismissed, with the exception of Joseph Vail.<sup>1</sup> Failure to comply with the procedural requirements set forth in the hearing notice for participation in a hearing, including the deadline for submitting a Notice of Intent to Appear, is grounds for dismissal. (Cal. Code Regs., tit. 23, § 648.1, subd. (c); see also *id.*, § 750.) The persons listed above did not submit a Notice of Intent to Appear and, with the exception of Mr. Vail, did not respond to VVWRA's request for dismissal of their protests. Accordingly, the protests are dismissed, with the exception of the protest of Mr. Vail.

By letter dated October 31, 2000, Mr. Vail, who is not represented by counsel, admitted that he missed the deadline to file a Notice of Intent to Appear because he failed to carefully read the hearing notice. Mr. Vail has, however, responded to VVWRA's request for dismissal and filed a late Notice of Intent to Appear. Moreover, no party will be prejudiced if Mr. Vail is allowed to participate in the hearing in order to support his protest, as the deadline to exchange testimony and exhibits has not passed. In his Notice of Intent to Appear, Mr. Vail did not list any witnesses. It is not clear whether Mr. Vail intends cross-examine other parties' witnesses or present rebuttal evidence, or if he intends only to make a policy statement. In the event that he wishes to make a policy statement only, I am informing Mr. Vail that he may submit the policy statement in writing and need not appear at the hearing.

VVWRA has also objected to the presentation of evidence by SCWC and AVRWC, who did file timely Notices of Intent to Appear, but who are not protestants. VVWRA argued that the deadline to filing protests has long since past, and allowing SCWC and AVRWC to participate in the hearing would undermine the SWRCB's policy of encouraging the informal resolution of

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<sup>1</sup> Mojave Water Agency has informed the SWRCB that its comments on VVWRA's petition should not be construed as a protest. Accordingly, this ruling does not apply to Mojave Water Agency.

protests. Accordingly, VVWRA argued that SCWA and AVRWC should only be permitted to present non-evidentiary policy statements.

Although VVWRA's arguments raise legitimate concerns, I have concluded that SCWA and AVRWC should be allowed to fully participate and present testimony in the hearing. Generally, participation early in the process should be encouraged. Interested persons have a strong incentive to file protests, however, even if persons who do not file protests are allowed to participate in hearings. By failing to file a protest, a person runs the risk that the matter will be resolved without a hearing if no other persons protest or all protests are resolved. If a hearing is held, the SWRCB's hearing procedures do not require the filing of a protest as a prerequisite to participating in the hearing. SCWC and AVRWC have fully complied with the procedural requirements for participation in this hearing.

In summary, the hearing in this proceeding will be postponed until December 5, 2000, at 10:00 a.m., and, if necessary, December 6, 2000, at 9:00 a.m. All parties have until November 13, 2000, to submit written testimony and other evidence. The protests of the following parties are dismissed: James and Naomi Rossi, Jean DeBlasis as Trustee of Kemper Campbell Ranch, Baldy Mesa Water District, Silver Lakes Association, Gary Thrasher, and Newton T. Bass Trust. VVWRA's objection to the presentation of evidence by SCWC and AVRWC is overruled.

If you have any questions about this ruling, please contact Ms. Dana Differding, Staff Counsel, at (916) 657-2086.

Sincerely,

*Original Signed By:*

Arthur G. Baggett  
Acting Chair, State Water Resources Control Board

cc: Victor Valley Wastewater  
Reclamation Authority  
c/o Mr. Daniel Gallager  
General Manager  
20111 Shay Road  
Victorville, CA 92394

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California Department of Fish and Game  
c/o Mr. Alan Pickard  
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cc: (continued on from previous page)

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Apple Valley, CA 92307

Jess Ranch Water Company  
c/o Mr. Gary Ledford, Vice President  
11401 Apple Valley Road  
Apple Valley, CA 92308

Mr. Joseph Vail  
16993 Abbey Lane  
Victorville, CA 92394

Ms. Jean DeBlasis, Trustee  
Kemper Campbell Ranch  
c/o Mr. Scott B. Campbell  
Rogers & Scheffield, LLP  
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Santa Barbara, CA 93121-2257

Apple Valley Ranchos Water Company  
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Southern California Water Company  
c/o Mr. Boyd Lee Hill  
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Baldy Mesa Water District and  
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