



Linda S. Adams
Secretary for
Environmental Protection

State Water Resources Control Board

Division of Water Rights

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Arnold Schwarzenegger
Governor

NOTICE OF PUBLIC HEARING

**The State Water Resources Control Board will hold a Hearing
to Determine Whether to Modify
Part A of Order WR 2006-0006 which, in part,
adopted a Cease and Desist Order against the
Department of Water Resources and the United States Bureau of Reclamation**

Sacramento River, San Joaquin River and Sacramento-San Joaquin Delta Channels
San Joaquin County

The **Public Hearing** will commence on
Thursday, June 25, 2009, at 9:00 a.m.

in the
Coastal Hearing Room
Joe Serna, Jr./Cal-EPA Building
1001 I Street, Second Floor
Sacramento, CA

PURPOSE OF HEARING

The purpose of this hearing is for the State Water Resources Control Board (State Water Board or Board) to receive evidence relevant to determining whether to modify the Cease and Desist Order issued against the Department of Water Resources (DWR) and the United States Bureau of Reclamation (Reclamation) in Part A of State Water Board [Order WR 2006-0006](#).¹ The conditions in Part A require that by July 1, 2009, DWR and Reclamation implement measures to obviate the threat of noncompliance with conditions in their permits and license² that require DWR and Reclamation to implement the 0.7 mmhos/cm electrical conductivity (EC) water quality objective for agricultural beneficial uses applicable from April through August of each year at the interior southern Delta compliance locations (San Joaquin River at Brandt Bridge,

¹ In Part B of Order WR 2006-0006, the State Water Board also revised the July 1, 2005, conditional approval by the Chief of the Division of Water Rights (Division) of the Water Quality Response Plan (WQRP) submitted by the Department of Water Resources and United States Bureau of Reclamation for their use of each other's points of diversion (also known as joint points of diversion or JPOD) in the southern Sacramento-San Joaquin Delta. Those revisions will not be considered in this proceeding.

² Permits 16478, 16479, 16481, 16482, and 16483 (Applications 5630, 14443, 14445A, 17512, and 17514A, respectively), of the Department of Water Resources and License 1986 (Application 23) and Permits 11315, 11316, 11885, 11886, 11887, 11967, 11968, 11969, 11970, 11971, 11972, 11973, 12364, 12721, 12722, 12723, 12725, 12726, 12727, 12860, 15735, 16597, 16600, and 20245 (Applications 13370, 13371, 234, 1465, 5638, 5628, 15374, 15375, 15376, 16767, 16768, 17374, 17376, 5626, 9363, 9364, 9366, 9367, 9368, 15764, 22316, 14858A, 19304, and 14858B, respectively).

Old River near Middle River, and Old River at Tracy Road Bridge) (hereinafter referred to as the interior southern Delta salinity objectives).

BACKGROUND

Following a public hearing, the State Water Board adopted Order WR 2006-0006 on February 15, 2006. As stated above, in Order WR 2006-0006, the State Water Board ordered DWR and Reclamation to take corrective actions under a time schedule to obviate the threat of noncompliance with their permit and license conditions. Condition A.2. of Order WR 2006-0006 requires DWR and Reclamation to develop and implement a plan to obviate the threat of noncompliance with the interior southern Delta salinity objectives. Condition A.2 specifies that the compliance plan may provide for the implementation of permanent barriers in the Delta or other measures if those measures would provide the same degree of salinity control as the barriers. Condition A.6 of Order WR 2006-0006 requires DWR and Reclamation to submit quarterly reports on progress towards compliance and an updated projection of the final compliance date.

In compliance with Condition A.2., DWR and Reclamation submitted a plan and schedule, dated April 14, 2006, for obviating the threat of noncompliance that involves construction and operation of permanent operable gate structures in the southern Delta through the South Delta Improvement Program (SDIP) by July of 2009. DWR and Reclamation stated that implementing the proposed gate project was contingent on completion of required environmental documentation and compliance with the Endangered Species Act (ESA) and other regulatory requirements.

In December of 2006, DWR and Reclamation released a final Environmental Impact Statement and Environmental Impact Report (EIS/EIR) for the SDIP. However, starting in February of 2007, DWR advised the State Water Board in its required quarterly status reports that there would be delays in obtaining Endangered Species Act (ESA) compliance. In May of 2007, DWR advised the State Water Board that the necessary ESA consultation for the SDIP would be included in the consultation for the Operations Criteria and Plan (OCAP) for the Central Valley Project and State Water Project and accordingly that the time schedules included in the plan for installing permanent barriers could not be met. Since that time, DWR has continued to inform the State Water Board regarding delays in issuance of the biological opinions from the U.S. Fish and Wildlife Service (USFWS) and National Oceanic and Atmospheric Administration's National Marine Fisheries Service (NOAA Fisheries) for OCAP and the associated delays in construction of the gates that would result. In December of 2008, USFWS issued a biological opinion (BO) on OCAP and NOAA Fisheries issued a draft biological opinion. Following release of the draft NOAA Fisheries biological opinion, DWR indicated in its quarterly status reports that it would be at least several more years before any barriers could be constructed and that it may not even be possible to construct the barriers once the biological opinion is finalized.

In a letter dated May 29, 2009, DWR and Reclamation applied to the Board for a modification of Order WR 2006-0006, and requested that the State Water Board issue a notice under Water Code Section 1832 and provide an opportunity for hearing regarding their application. DWR and Reclamation stated that a modification to Order WR 2006-0006 was necessary because the SDIP permanent operable gates will not be installed by July 1, 2009 to satisfy the Order. On June 4, 2009, NOAA Fisheries issued its final Biological Opinion for OCAP. Pursuant to the Federal ESA, if NOAA Fisheries finds that a proposed action is likely to jeopardize a species listed as threatened or endangered under the ESA or adversely modify its critical habitat, NOAA Fisheries is required to suggest those reasonable and prudent alternatives (RPAs) that it

believes would enable the project to go forward in compliance with the ESA. Regarding the SDIP, however, the NOAA Fisheries BO does not include RPAs, but instead states that DWR shall not implement the SDIP because that project would adversely modify critical habitat and NOAA Fisheries has not identified an alternative to the permanent gates that meets the requirements of the ESA. The BO goes on to state that after analyses are completed regarding the existing temporary barriers in the southern Delta, DWR can request that Reclamation reinstate ESA consultation with NOAA Fisheries on SDIP, pursue ESA permitting through another section of the ESA (section 10), or modify the design of the barriers based on related analyses.

The State Water Board is currently reviewing the 2006 Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay-Delta Plan) to determine what, if any, changes should be made to the southern Delta salinity objectives or the associated program of implementation for those objectives to ensure the reasonable protection of agricultural beneficial uses in the southern Delta. As part of this effort, earlier this year, pursuant to the California Environmental Quality Act the State Water Board issued a Notice of Preparation and held a public scoping meeting. State Water Board staff are currently preparing technical and environmental analyses to inform the State Water Board regarding any modification to the objectives. Following completion of the environmental analyses, State Water Board staff will prepare any proposed amendments to the southern Delta salinity objectives or their implementation and will circulate the draft amendments and associated environmental documentation for public comment. The State Water Board will then determine what, if any, changes should be made to the objectives and program of implementation through adoption of any basin plan amendments. Following this basin planning phase, the State Water Board will undertake any necessary water rights or other proceeding to assign responsibility for meeting the southern Delta salinity objectives, including any changes that may be made to DWR's and Reclamation's responsibility for meeting the interior southern Delta salinity objectives. The State Water Board plans to complete both the water quality control planning and water rights implementation phases by the spring of 2012.

Water Code section 1832 provides that the Board may, after notice and opportunity for hearing, upon its own motion or upon receipt of an application from an aggrieved person, modify, revoke, or stay in whole or in part any cease and desist order issued pursuant to chapter 12 of part 2 of division 2 of the Water Code. Pursuant to section 1832, the State Water Board will hold a hearing to receive evidence relevant to determining whether to modify Part A of Order WR 2006-0006.

KEY ISSUES FOR HEARING

1. What modifications, if any, should the State Water Board make to the compliance schedule set forth in Part A of Order WR 2006-0006, and how should any modifications be structured to take into account any potential changes to the southern Delta salinity objectives or the program of implementation that may occur as a result of the State Water Board's current review of the Bay-Delta Plan?
2. If the compliance schedule contained in Part A of Order WR 2006-0006 is modified, what interim protective measures, if any, should be imposed?

HEARING OFFICERS AND HEARING TEAM

State Water Board Chairman Charles R. Hoppin and State Water Board Member

Arthur G. Baggett, Jr., will preside as hearing officers over this proceeding. State Water Board staff hearing team members will include Dana Heinrich, Senior Staff Counsel; Jean McCue, Water Resource Control Engineer; and Diane Riddle, Staff Environmental Scientist. The hearing team will assist the hearing officers and other members of the State Water Board throughout this proceeding.

HEARING PARTICIPATION

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

Shortly after the deadline for Notices of Intent to Appear, the State Water Board will mail out a list of those who have indicated a desire to participate in the hearing and a copy of all Notices of Intent to Appear that were timely received by the State Water Board. The list is provided in order to facilitate exchange of written testimony, exhibits and witness qualifications in advance of the hearing. Only parties and other participants who are authorized by the hearing officers will be allowed to present evidence. The **requisite number of copies** of witnesses' proposed **testimony, exhibits, lists of exhibits, qualifications, and statement of service** must be **received** by the State Water Board and served on each of the parties who have indicated their intent to appear, **no later than the deadline listed below**:

12 Noon, Monday, June 15, 2009

Deadline for receipt of Notice of Intent to Appear.

12 Noon, Monday, June 22, 2009

Deadline for receipt and service of witnesses' proposed testimony, exhibits, lists of exhibits, qualifications, and statement of service.

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:

State Water Resources Control Board

Division of Water Rights

By mail: P.O. Box 2000, Sacramento, CA 95812-2000

By hand delivery: 1001 I Street, 2nd Floor, Sacramento, CA 95814

Phone: (916) 341-5351; Fax: (916) 341-5400

Email: wrhearing@waterboards.ca.gov

With Subject of "Hearing to Consider Modification of Order WR 2006-0006"

IF YOU HAVE ANY QUESTIONS

During the pendency of this proceeding and commencing no later than the issuance of this notice, there shall be no *ex parte* communications between State Water Board members or State Water Board hearing team staff and any of the other participants regarding substantive or controversial procedural matters within the scope of the proceeding. (Gov. Code, §§ 11430.10-11430.80.) Questions regarding non-controversial procedural matters (Gov. Code, § 11430.20, subd. (b)) should be directed to Dana Heinrich at (916) 341-5188, or by email to dheinrich@waterboards.ca.gov; or to Jean McCue at (916) 341-5351, or by email to jmccue@waterboards.ca.gov.

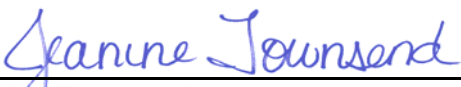
PARKING, ACCESSIBILITY, AND SECURITY

The enclosed maps show the location of the Joe Serna Jr./Cal-EPA Building and public parking sites in Sacramento. The Joe Serna Jr./Cal-EPA Building is accessible to people with disabilities. Individuals who require special accommodations at the Joe Serna Jr./Cal-EPA Building are requested to contact Catherine Foreman, Office of Employee Assistance, at (916) 341-5881.

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

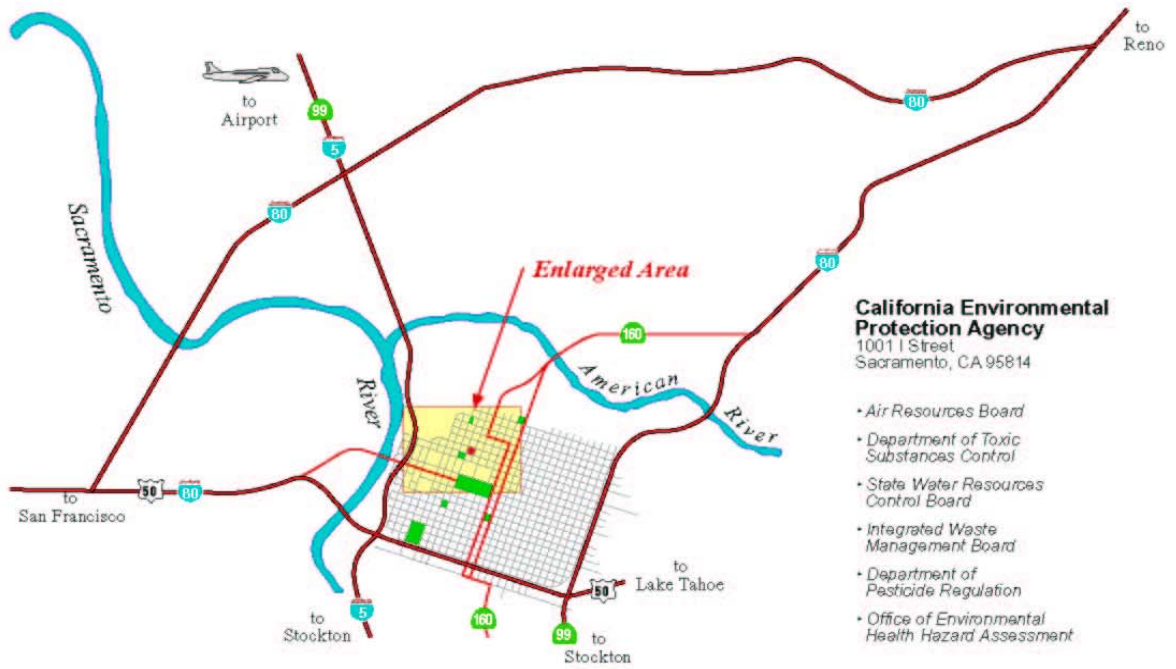
June 5, 2009

Date



Jeanine Townsend
Clerk to the Board

Attachments



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.)

INFORMATION CONCERNING APPEARANCE AT WATER RIGHT HEARINGS

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

1. **HEARING PROCEDURES GENERALLY:** The hearing will be conducted in accordance with the procedures for hearings set forth at California Code of Regulations, title 23, sections 648-648.8, 649.6 and 760-767, as they currently exist or may be amended. A copy of the current regulations and the underlying statutes governing adjudicative proceedings before the State Water Board is available upon request or may be viewed at the State Water Board's web site: http://www.waterboards.ca.gov/laws_regulations.

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 officers may extend these rights to a non-party participant or may limit the participation of a non-party participant.

Any requests for exceptions to procedural requirements shall be filed in writing with the State Water Board and served on the parties. To provide time for other participants to respond, the hearing officers will rule on procedural requests filed in writing no sooner than fifteen days after receiving the request, unless an earlier ruling is necessary to avoid disrupting the hearing.

2. **PARTIES:** The parties are the California Department of Water Resources and the United States Bureau of Reclamation. Other persons or entities wishing to participate as parties may do so only if authorized by the hearing officers. Only parties and other participants who are authorized by the hearing officers will be allowed to present evidence.

A person or entity that appears and presents only a policy statement will not be allowed to make objections, offer evidence, conduct cross-examination, make legal argument or otherwise participate in the evidentiary hearing. The rules for policy statements are discussed below.

3. **NOTICE OF INTENT TO APPEAR:** Participants in this hearing must file either an electronic copy or a paper copy of a Notice of Intent to Appear, which must be **received** by the State Water Board no later than **the deadline prescribed in the Hearing Notice**. Failure to submit a Notice of Intent to Appear and exhibits in a timely manner may be interpreted by the State Water Board as intent not to appear. Any faxed or emailed Notices of Intent to Appear must be followed by a mailed or delivered hard copy with an original signature.

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 each witness' proposed testimony; and (4) an estimate of the time (not to exceed 20 minutes¹) that the witness will need to present a brief oral summary of their testimony. The witness's testimony must be submitted in writing as described in section 4 below. Participants who do not intend to present a case-in-chief but wish to cross-examine witnesses or present rebuttal should so indicate on the Notice of Intent to Appear.

¹ The 20-minute limit may be further reduced by a hearing officer.

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 person who has submitted a Notice of Intent to Appear. 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.² Written testimony shall be designated as an exhibit, and must be submitted with the other exhibits. Oral testimony that goes beyond the scope of the written testimony may be excluded. A 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: (1) eight paper copies of each of its exhibits; or (2) six paper copies and one electronic copy of each of its exhibits. **All electronic and paper copies must be received by the State Water Board no later than the deadline stated in the hearing notice.** 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. 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.

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.

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

² The hearing officers 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 officers may allow presentation of the oral direct testimony without requiring written testimony

received by the State Water Board and served on the other participants no later than the deadline prescribed in the Hearing Notice.

The following requirements apply to exhibits:

- a. Exhibits based on technical studies or models shall be accompanied by sufficient information to clearly identify and explain the logic, assumptions, development, and operation of the studies or models.
 - b. The hearing officers have discretion to receive in evidence by reference relevant, otherwise admissible, public records of the State Water Board and documents or other evidence that have been prepared and published by a public agency, provided that the original or a copy was in the possession of the State Water Board before the notice of the hearing is issued. (Cal. Code Regs., tit. 23, § 648.3.) A 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 2003 software.
 - d. Exhibits that rely on unpublished technical documents will be excluded unless the unpublished technical documents are admitted as exhibits.
 - e. 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.
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 officers specify otherwise.

Any documents submitted or served electronically must be in Adobe™ Portable Document Format (PDF), except for Exhibit Identification Indexes, which may be in a version supported by Microsoft Excel or Word. Electronic submittals to the State Water Board of documents less than 11 megabytes in total size (incoming mail server attachment limitation) may be sent via electronic mail to: wrhearing@waterboards.ca.gov with a subject of "Hearing to Consider Modification of Order WR 2006-0006." Electronic submittals to the State Water

Board of documents greater than 11 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 to the email address provided on the Notice of Intent. Participants who agree to electronic service may request that specific documents be provided to them in paper copy, or by mail on CD. Requests should be made to the 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.waterboards.ca.gov/waterrights/water_issues/programs/hearings/currentprojects.shtml .

6. **ORDER OF PROCEEDING:** The State Water Board members serving as hearing officers will follow the Order of Proceedings specified in California Code of Regulations, title 23, section 648.5. Participants should take note of the following additional information regarding the major hearing events. The time limits specified below may be changed by the hearing officers, at their discretion, as a result of the pre-hearing conference.
 - a. **Policy Statements Within the Evidentiary Hearing:** 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 hearing participants. 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 pre-hearing 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 officers.
 - 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 officers may allow redirect examination and recross examination. The hearing officers 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.³ Each participant will be allowed up to two hours total to present all of its direct testimony.⁴
- c. **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 officers have 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.
- d. **Rebuttal:** After all participants have presented their cases-in-chief and their witnesses have been cross-examined, the hearing officers 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.
- e. **Closing Statements and Legal Arguments:** At the close of the hearing or at other times if appropriate, the hearing officers may allow oral arguments or set a schedule for filing briefs or closing statements. If the hearing officers authorize the participants to file briefs, five copies of each brief shall be submitted to the State Water Board, and one copy shall be served on each of the other participants on the service list. A participant

³ The hearing officers 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 officers are satisfied that the participant could not produce written direct testimony for the witness.

⁴ The hearing officers 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.

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.

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 supervisors, and any of the other participants, including the members of the prosecution team and their supervisors, regarding substantive or controversial procedural 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 staff on the hearing team, not State Water Board members. (Gov. Code, § 11430.20, subd. (b).) A document regarding *ex parte* communications entitled "Ex Parte Questions and Answers" is available upon request or from our website at:
http://www.waterboards.ca.gov/laws_regulations/docs/exparte.pdf.
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.

STAFF EXHIBITS TO BE OFFERED INTO EVIDENCE

The following items will be offered, by reference, as staff exhibits at the hearing to consider modification of Order WR 2006-0006:

1. State Water Board Order WR 2006-0006:
http://www.waterboards.ca.gov/waterrights/board_decisions/adopted_orders/orders/2006/wro2006_0006.pdf
2. State Water Board Revised Decision 1641:
http://www.waterboards.ca.gov/waterrights/board_decisions/adopted_orders/decisions/d1600_d1649/wrd1641_1999dec29.pdf
3. June 4, 2009 NOAA Fisheries Biological and Conference Opinion on the Long-Term Operations of the Central Valley Project and State Water Project:
<http://swr.nmfs.noaa.gov/ocap.htm>
4. June 1, 2009 Department of Water Resources *Quarterly Status Report, May 2009, Cease and Desist Order WR 2006-0006.*
5. May 29, 2009 letter from Jerry Johns, Department of Water Resources, and Ronald Milligan, U.S. Bureau of Reclamation with the subject, *Application for Modification of Cease and Desist Order Under Water Code Section 1832.*
6. February 13, 2009 State Water Board *Notice of Preparation and of Scoping Meeting for Environmental Documentation for the Update and Implementation of the Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary: Southern Delta Salinity and San Joaquin River Flows:*
http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/bay_delta_plan/environmental_review/docs/nop2009feb13.pdf
7. July 2008 State Water Board, Central Valley Regional Water Quality Control Board, and San Francisco Bay Regional Water Quality Control Board *Strategic Workplan for Activities in the San Francisco Bay/Sacramento-San Joaquin Delta Estuary.*
http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/strategic_plan/docs/baydelta_workplan_final.pdf
8. December 2006 *Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary and Plan Amendment Report (Appendix 1):*
http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/wq_control_plans/2006wqcp/docs/2006_app1_final.pdf

9. May 12, 2006 State Water Board response to Department of Water Resources and U.S. Bureau of Reclamation April 14, 2009 Compliance Report:
http://www.waterboards.ca.gov/waterrights/water_issues/programs/hearings/delta_salinity/docs/compliance/wro06_2006_051206.pdf
10. April 14, 2006 *Department of Water Resources and U.S. Bureau of Reclamation Report in Compliance With Cease And Desist Order WR 2006-0006*:
http://www.waterboards.ca.gov/waterrights/water_issues/programs/hearings/delta_salinity/docs/compliance/wro06_2006_041406.pdf

NOTICE OF INTENT TO APPEAR

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

**HEARING TO CONSIDER MODIFICATION OF ORDER WR 2006-0006
Department of Water Resources and U.S. Bureau of Reclamation
Sacramento and San Joaquin Rivers and Delta**

**scheduled for
Thursday, June 25, 2009**

Check all that apply:

- I/we intend to present a policy statement only.
- I/we intend to participate by cross-examination or rebuttal only.
- I/we 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 (Please indicate Application Number if Appropriate)	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: () _____

Email Address: _____

HEARING TO CONSIDER MODIFICATION OF ORDER WR 2006-0006
Department of Water Resources and U.S. Bureau of Reclamation
Sacramento and San Joaquin Rivers and Delta

scheduled to commence
June 25, 2009

Exhibit Identification Index

Participant: _____

Exhibit No.	Description	Status as Evidence		
		Introduced	Accepted	By Official Notice