



Linda S. Adams
Secretary for
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State Water Resources Control Board

Division of Water Rights

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Arnold Schwarzenegger
Governor

**NOTICE OF PETITION
REQUESTING CHANGE IN THE PLACE OF USE
FOR CERTAIN WATER RIGHTS OF THE
DEPARTMENT OF WATER RESOURCES AND BUREAU OF RECLAMATION**

AND

NOTICE OF PUBLIC HEARING AND PRE-HEARING CONFERENCE

The State Water Resources Control Board will hold a Hearing
to Consider a Petition to Change the Place of Use
involving

Water Right Permits 16478, 16479, 16481, 16482 and 16483
(Applications 5630, 14443, 14445A, 17512, and 17514A)
of the California Department of Water Resources
and

Water Right Permits 11315, 11316, 11885, 11886, 11887, 11967, 11968, 11969, 11970,
11971, 11972, 11973, 12364, 12721, 12722, 12723, 12725, 12726, 12727, 12860, and 15735
(Applications 13370, 13371, 234, 1465, 5638, 5628, 15374, 15375, 15376, 16767, 16768,
17374, 17376, 5626, 9363, 9366, 9367, 9368, 15764, 22316) and
License 1986 (Application 000023)
of the United States Bureau of Reclamation¹

A Pre-hearing Status Conference
will commence on

Thursday, April 16, 2009, at 1:00 p.m.

at

Joe Serna Jr./Cal EPA Building, Sierra Hearing Room
1001 I Street, Second Floor, Sacramento, CA

The hearing will commence at 9:00 a.m. on Monday, April 27, 2009, and continue,
if necessary, on April 28, 2009

at

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

¹ The counties that would be affected by this change petition are Kern, Napa, Fresno, Sacramento, San Joaquin, Ventura, Los Angeles, Riverside, San Bernardino, San Diego, Orange County, Imperial, Kings, Santa Barbara, Merced, Tulare, Solano, Stanislaus, Santa Clara, Alameda, San Benito, Contra Costa, Yolo, El Dorado, Colusa, Yuba, Placer, and Sutter.

NOTICE OF PETITION AND EVIDENTIARY HEARING

The State Water Resources Control Board (State Water Board or Board) hereby issues joint notice of a petition to change specified water rights of the California Department of Water Resources (DWR) and the United States Bureau of Reclamation (Reclamation)² and a notice of an evidentiary hearing to consider the petition.³

The State Water Board intends to hold an evidentiary hearing on the petition described below on April 27, 2009 and continue, if necessary, on April 28, 2009. The purpose of this hearing is to receive evidence relevant to determining whether the State Water Board should approve, subject to terms and conditions, the aforementioned petition for change.

SUBJECT OF PETITION

DWR and Reclamation filed the petition on March 20, 2009, pursuant to Water Code section 1701. The petition requests that the changes be effective for two years from the date of approval. The petition seeks (1) to expand the authorized place of use contained in the State Water Project (SWP) water right permits listed above to include the Central Valley Project (CVP) place of use downstream of the confluence of the Feather River and Sacramento River, and (2) to expand the authorized place of use contained in the CVP water right license and permits listed above to include the SWP place of use downstream of the Barker Slough and Banks Pumping Plants. The petition states that numerous potential water transfers or exchanges may be facilitated by the proposed changes. Several transfers and exchanges are described in the petition. The petition also states that other, as yet undefined, transfers or exchanges may occur pursuant to the petitioned changes. The petition identifies guidelines for notifying the State Water Board of these potential future transfers or exchanges and provides criteria that potential future transfers or exchanges must meet to qualify for approval pursuant to this change.

The petition states that the proposed changes “will not result in any increase in water appropriated by the Projects”⁴ and that all water exported at the SWP and CVP pumping plants will be pumped consistent with the requirements of State Water Board Decision 1641, as well as the requirements contained in biological opinions for the protection of Sacramento River winter-run Chinook salmon, Delta smelt, spring-run Chinook salmon, and steelhead. Additional information regarding this petition, including maps of the places of use subject to these changes, descriptions of the identified transfers and exchanges, and a description of the criteria for potential future transfers or exchanges is available for viewing online at:

http://www.waterrights.ca.gov/Hearings/docs/usbr_dwr/index.html

² DWR and Reclamation manage the State Water Project and the Central Valley Project, respectively, which are collectively referred to as “the Projects.”

³ DWR and Reclamation filed one petition. The State Water Board’s regulations require a petitioner requesting changes to more than one water right to file a separate petition for each right and to pay a filing fee for each petition. (Cal. Code Regs., tit. 23, § 1064, subd. (a)(1).) If a petitioner seeks the same change to more than one water right, however, filing a single petition is permissible, provided that the requisite filing fees are paid.

⁴ The Petition also states: “the total quantity of water delivered to SWP or CVP contractors as a result of the change will not exceed historic deliveries to any individual water user or be applied to any service areas that do not already receive water from the SWP or CVP.”

BACKGROUND

On February 27, 2009, Governor Schwarzenegger proclaimed a State of Emergency to exist within California and directed DWR and other entities to take immediate action to address the serious drought conditions and water delivery limitations that currently exist in California. Specific to this petition, the Proclamation directs the State Water Board to expedite the processing and consideration of the request by DWR for approval of the consolidation of the places of use and points of diversion for the SWP and CVP to allow flexibility among the projects and to facilitate water transfers and exchanges.

Petitioners illustrate the current water supply situation with this statement, excerpted from the petition for change:

2009 has the potential to be one of the most severe drought years in California's recorded history. Water supplies in major reservoirs and many groundwater basins are already well below average. The three-year cumulative water deficit is so large there is only a 15 percent chance that California will replenish its water supply this year. California's water supply system is less able to provide adequate drought year supplies than in previous multi-year drought periods. Regulatory restrictions have reduced the flexibility of the Projects' operations throughout the year, substantially limiting the Projects' ability to store and export natural flow during the winter and spring periods in dry years. Since the last significant drought period, California has experienced a substantial increase in the planting of permanent, high-value crops that cannot be fallowed on an annual basis in response to fluctuating water supplies.

The petition goes on to state:

Due to the extremely dry conditions, regulatory and operational constraints, the allocation to the SWP water users is only 20 percent of requested demand. If the SWP 2009 allocation is not increased over the course of the year, this would represent the lowest allocation for Municipal and Industrial (M&I) contractors since the construction of the SWP. In addition, the allocation to CVP agricultural water service contractors south of the Delta is 0 percent. As a result of the limited or non-existent Projects supplies, thousands of acres of agricultural land will be fallowed this year and cities across the state have imposed, or will soon impose, water rationing programs. Water transfers and exchanges can provide supplemental supplies to help mitigate the devastating crop losses or risks to human health and safety.

In sum, DWR and Reclamation filed the petition in response to the combination of consecutive dry years, regulatory constraints on Project pumping, and the potential for significant economic impacts.

KEY ISSUES FOR HEARING

1. Should the subject petition to change the place of use under the specified license and permits of USBR and DWR be approved?
2. If the subject petition is approved, what (if any) terms and conditions of approval should be imposed?

3. Would approval of the subject petition (with any terms and conditions identified pursuant to Issue number 2 initiate a new right or injure other legal users of water?
4. Would approval of the subject petition unreasonably affect water quality, fish, wildlife, or other instream beneficial uses?
5. Are the proposed changes in the public interest?
6. What would be the effects or impacts (if any) to the State of California if the proposed changes are not approved?

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; Jane Farwell, Environmental Scientist; and Ernest Mona, Water Resource Control Engineer. The hearing team and their supervisors will assist the hearing officers and the other members of the State Water Board throughout this proceeding.

PROTESTING THE PETITION

IF YOU WISH TO PROTEST the petition, you may submit a protest in accordance with Water Code section 1703.2. Standard forms on which to submit protests may be obtained from the State Water Board's Division of Water Rights or downloaded from the Division of Water Rights website at <http://www.waterrights.ca.gov/forms/pro-pet.pdf>. Protests must be submitted in writing, with a duplicate copy to both petitioners, and must be **received** by the State Water Board no later than **12 noon on Monday, April 13, 2009**. **Any correspondence directed to the petitioners should be mailed to:**

Department of Water Resources
c/o Robert B. Cooke, Chief
State Water Project Analysis Office
PO Box 942836
Sacramento, CA 94236-0001

United States Bureau of Reclamation
c/o Ron Milligan, Operations Manager
Central Valley Operations Office
3310 El Camino Avenue, Suite 300
Sacramento, CA 95825

The State Water Board intends to conduct a hearing on the change of place of use petition beginning on Monday, April 27, 2009 to receive evidence related to the petition and any unresolved protests. If you intend to protest the petitions, you must also submit a **Notice of Intent to Appear** indicating your intent to appear to present evidence in support of your protest. You must also comply with the other instructions below related to hearing participation. **If you do not resolve your protest with the petitioners prior to the hearing and then do not present a case supporting your protest at the hearing, your protest will be dismissed.**

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. 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, April 13, 2009

Deadline for receipt of Protest and Notice of Intent to Appear.⁵

12 Noon, Wednesday, April 22, 2009

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

PRE-HEARING CONFERENCE

The hearing officers will conduct a pre-hearing conference to discuss the scope of the hearing and any other procedural issues on **Thursday, April 16, 2009 at 1:00 p.m.** The goal of the pre-hearing conference is to ensure that the hearing proceeds in an orderly and expeditious manner. The pre-hearing conference will not be used to hear arguments on, or determine the merits of, any hearing issues, other than procedural matters, unless the parties agree to resolve a hearing issue by stipulation. Following the pre-hearing conference, the State Water Board may, at its discretion, modify the hearing procedures or issues set forth in this notice in whole or in part. **All parties to the hearing must attend the pre-hearing conference.** Failure to attend the pre-hearing conference may result in exclusion from participation in the hearing.

⁵ Submission of a Notice of Intent is required regardless of whether or not a hearing participant protests the petition.

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
Attn: Jane Farwell
P.O. Box 2000
Sacramento, CA 95812-2000

Phone: (916) 341-5349

Fax: (916) 341-5400

Email: wrhearing@waterboards.ca.gov

With Subject of "USBR/DWR Place of Use Petition Hearing"

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 Jane Farwell at (916) 341-5349, or by email to jfarwell@waterboards.ca.gov.

PARKING, ACCESSIBILITY, AND SECURITY

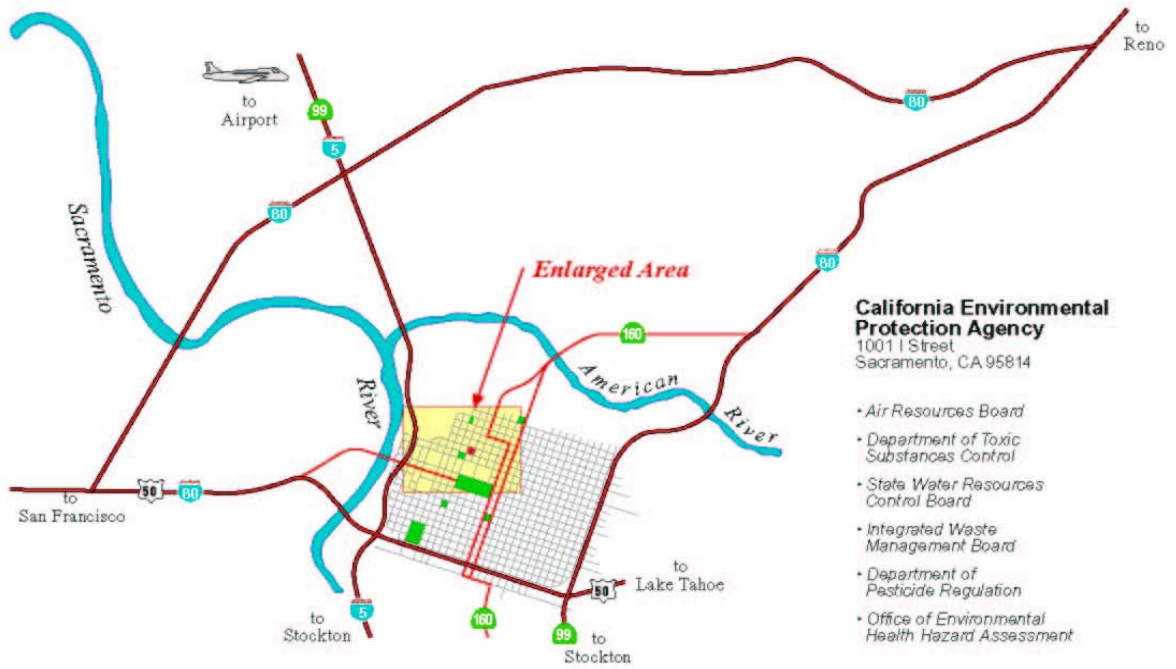
The enclosed maps show the location of the Joe Serna Jr./Cal-EPA Building and public parking sites in Sacramento. The Joe Serna Jr./Cal-EPA Building Coastal Hearing Room is accessible to persons with disabilities. Individuals who require special accommodations at the Joe Serna Jr./Cal-EPA Building are 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 your meeting.

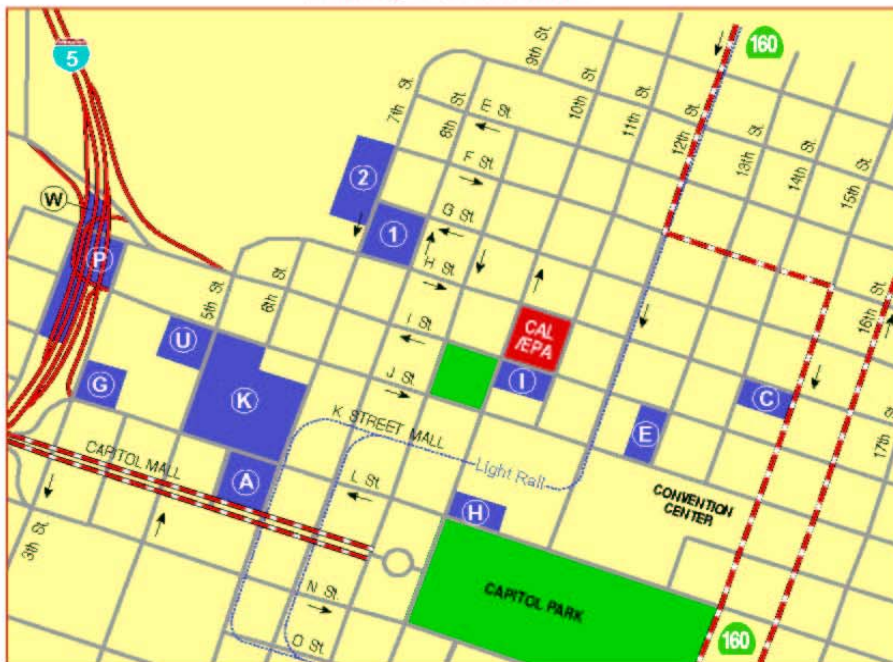
3/30/09
Date

Thomas Howard
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, 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, the United States Bureau of Reclamation, and parties whose protests are accepted. 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

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

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. 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) seven paper copies of each of its exhibits; or (2) five 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.

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

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 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 "USBR/DWR Place of Use Petition Hearing." 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.waterrights.ca.gov/Hearings/docs/usbr_dwr/index.html.

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
- 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 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.
- c. **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.
- d. **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

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.

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 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.

NOTICE OF INTENT TO APPEAR

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

**USBR/DWR PLACE OF USE PETITION HEARING
scheduled to commence
April 27, 2009**

- I/we also have protested the USBR/DWR Place of Use Petition
- I/we intend to participate in the evidentiary portion of the hearing regarding the USBR/DWR Place of Use 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 (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: () _____

E-mail Address: _____

USBR/DWR PLACE OF USE PETITION HEARING
scheduled to commence
April 27, 2009

Exhibit Identification Index

Participant: _____

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