



State Water Resources Control Board



Winston H. Hickox
Secretary for
Environmental
Protection

Division of Water Rights
1001 I Street, 14th Floor • Sacramento, California 95814 • (916) 341-5300
Mailing Address: P.O. Box 2000 • Sacramento, California • 95812-2000
FAX (916) 341-5400 • Web Site Address: <http://www.swrcb.ca.gov>
Division of Water Rights: <http://www.waterrights.ca.gov>

RM

Gray Davis
Governor

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NOTICE OF POSTPONEMENT OF PUBLIC HEARING AND RE-NOTICE OF PUBLIC HEARING

**Proposed Revocation of Permit 20821A
(Application 30119A) of
Alan Hardin Trust, Donald Hardin Trust and Jeanne Hardin Trust**

Three Unnamed Streams and Hardin Creek in Napa County

Commencing at 10:00 a.m. on Monday, November 4, 2002

**Joe Serna, Jr. Cal-EPA Building
1001 I Street, Second Floor Sierra Hearing Room
Sacramento, California**

SUBJECT OF HEARING

This hearing is scheduled to receive evidence which will assist the State Water Resources Control Board in determining whether Permit 20821A of Alan Hardin Trust, Donald Hardin Trust and Jeanne Hardin Trust should be revoked for failure to commence and complete construction and put the authorized water to beneficial use as contemplated in the permit in accordance with the Water Code.

PLEASE TAKE NOTICE

That the public hearing previously scheduled to commence on October 21, 2002, has been

POSTPONED.

**The hearing will be held at 10:00 a.m.
on Monday, November 4, 2002**

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

As stated in the enclosure, parties intending to present evidence at the hearing must submit a "Notice of Intent to Appear." Written testimony and other exhibits must be **RECEIVED** by the Board and **RECEIVED** by the persons on the enclosed Service List on or before **4:00 p.m. on October 21, 2002**. Persons who previously sent a Notice of Intent to Appear and written testimony and exhibits do not have to send them again.

BACKGROUND

Permit 20821 (Application 30119) was issued on January 26, 1996 to Alan Hardin Trust, Donald Hardin Trust and Jeanne Hardin Trust. On December 10, 1997, the Division of Water Rights (Division) issued an order splitting Permit 20821 into Permits 20821A and 20821B. The Alan Hardin Trust, et al. retained Permit 20821A. The permit authorizes collection of water to storage from November 1st of each year to May 31st of the succeeding year. Permit 20821A authorizes a total of 196 acre-feet per annum to be collected in four reservoirs at 49 acre-feet per reservoir. The maximum rate of diversion to offstream storage under this permit together with that diverted under Permit 20821B shall not exceed 10 cubic feet per second.

The time to complete construction ended on December 31, 1998, and the time to complete full beneficial use of water ended on December 31, 1999. On December 28, 1998, Alan Hardin filed a petition for extension of time, on behalf of the trust. The petition states that construction and/or use of water was not completed within the time allowed due to a lack of time and money.

The Notice of Proposed Revocation for Permit 20821A is based upon the following facts and information:

- Permittee has not started construction or applied the water authorized to be stored under Permit 20821A to beneficial use as contemplated in the permit and in accordance with the Water Code.
- Title 23, California Code of Regulations section 844 states that lack of finances will not generally be accepted as good cause for delay in developing a permitted project.

ABOUT THIS HEARING

In this hearing, the Division of Water Rights will be represented by a permitting team who will be a party to the hearing. The permitting team is separated from the hearing team by an ethical wall and is prohibited from having *ex parte* communications with members of the hearing team regarding substantive issues and controversial procedural issues within the scope of this proceeding. The staff members of the hearing team will assist the hearing officer and the other members of the SWRCB in the hearing.

KEY ISSUES

Should Permit 20821A (Application 30119A) be revoked in accordance with Water Code Section 1410 for failure to prosecute with due diligence the construction of the project and to put the water to beneficial use as contemplated in the permit?

HEARING PARTICIPATION

All persons who plan to participate in this hearing should carefully read the enclosure entitled "Information Concerning Participation in Water Rights Hearings." As stated in that enclosure, parties intending to present evidence at the hearing must submit a "Notice of Intent to Appear." Written testimony and other exhibits must be **RECEIVED** by the Board **and RECEIVED** by the persons on the enclosed Service List on or before **4:00 P.M. on October 21, 2002**. Questions concerning this notice may be directed to Ruben Mora at (916) 341-5387 or FAX # (916) 341-5400.

PARKING AND ACCESSIBILITY

The enclosed map shows the location of the Joe Serna, Jr. California Environmental Protection Agency (Cal-EPA) Building in Sacramento. Public parking is available in one- and two-hour metered spaces on area streets and in the public garages shown on the enclosed map.

The Cal-EPA Building second-floor Sierra Hearing Room is accessible to persons with disabilities. Individuals who require special accommodations are requested to contact Adrian Perez at (916) 341-5880 at least five working days prior to the meeting date. TTY users may contact the California Relay service at 1-800-735-2929 or voice line at 1-800-735-2922.

IF YOU HAVE ANY QUESTIONS

SWRCB Member Gary Carlton will preside as the hearing officer at this proceeding. SWRCB hearing team members will be Barbara Katz, Senior Staff Counsel, and Ruben L. Mora, Water Resource Control Engineer. During the pendency of this proceeding, commencing no later than the issuance of this notice, there will be no *ex parte* communications between SWRCB members or SWRCB staff and any of the participants regarding substantive issues within the scope of the proceeding (Gov. Code, §§ 11430.10-11430.80). Communications regarding routine, noncontroversial procedural matters are permissible and may be directed to staff counsel (Gov. Code, § 11430.20, subd.(b)). Barbara Katz may be reached at (916) 341-5192.

ORIGINAL SIGNED BY

Maureen Marché
Clerk to the Board

Enclosures

Date: RLM:ll 10/10/02 10:10 AM \\herdrv\Ruben Mora\Ruben Mora\hardin trust postponement & renote

OCT 10 2002

HARDIN TRUST

MAILING LIST

James Hansen
444 North Third Street, Suite 400
Sacramento, CA 95814

SERVICE LIST
(Certified Mail)

Donald R. Hardin
4500 Hardin Road
St. Helena, CA 94574

Alan Hardin
23620 Third Place West
Bothel, Washington 98021

Jeanne Hardin
4510 Hardin Road
St. Helena, CA 94574

Samantha Olson
Office of the Chief Counsel
State Water Resources Control Board
1001 I Street, 22nd Floor
Sacramento, CA 95814

Enclosure 1

INFORMATION CONCERNING PARTICIPATION IN
WATER RIGHTS HEARINGS

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

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

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

2. **PARTIES:** The parties are the water right holders whose exercise of their water rights may be modified as a result of this hearing and other interested persons or entities who intend to present evidence. Only parties and other participants who are authorized by the hearing officer will be allowed to present evidence. A person or entity who appears and presents only a policy statement will not be allowed to participate in other parts of the hearing. The rules for policy statements are discussed below.
3. **NOTICE OF INTENT TO APPEAR:** Participants in this hearing must file a Notice of Intent to Appear and five copies thereof which must be received by the SWRCB no later than 4:00 p.m. on October 21st. Failure to submit a Notice of Intent to Appear and exhibits in a timely manner may be interpreted by the SWRCB as intent not to appear.

The Notice of Intent to Appear must state the name and address of the participant; and if the participant is a party or desires to be recognized as a party, the name of each witness who will testify on the participant's behalf; a brief description of the proposed testimony; and an estimate of the time, not to exceed 20 minutes, that the witness will take to present a brief oral summary of the witness's testimony. The witness's testimony must be submitted in writing as described in section 4 below. Participants should indicate how they intend to participate in the hearing by marking the appropriate box on the Notice of Intent to Appear. Participants who do not intend to present a case in chief but who may wish to cross-examine witnesses or present rebuttal should so indicate on the Notice of Intent to Appear. Participants who decide not to present a case in chief after having submitted a Notice of Intent to Appear should notify the SWRCB 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 SWRCB encourages participants to submit written policy statements, written opening statements, written testimony, exhibits, and Exhibit Identification Indexes to the SWRCB in electronic form. In addition, participants may exchange the foregoing documents in electronic form. Hearing participants are not required to either 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.

Attached to this Notice is a copy of the service list of anticipated participants. The Notice must be sent to each person on the service list. The Notice must be **RECEIVED** by the SWRCB and **RECEIVED** by the persons on the service list on or before **4:00 p.m. on October 21, 2002**. Each participant shall also serve on the SWRCB and the persons on the service list a statement of service that indicates the manner of service. If there is any change in the hearing schedule, only those persons or entities who 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.¹ 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 SWRCB either: (1) five paper copies of each of its exhibits or (2) two paper copies and one electronic copy of each of its exhibits. Each participant shall also serve a copy of each exhibit on every participant on the service list. Participants may serve those parties who agree to electronic service with an electronic copy of exhibits. Participants must serve paper copies of exhibits on those participants who do not agree to electronic service.

With its exhibits, each participant must submit to the SWRCB and serve on the other participants a completed Exhibit Identification Index. If possible, each participant should submit to the SWRCB 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

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

service, must be **RECEIVED** by the SWRCB and **RECEIVED** by the persons on the service list by **4:00 p.m. on October 21st**.

The following requirements apply to exhibits:

- a. Exhibits based on technical studies or models shall be accompanied by sufficient information to clearly identify and explain the logic, assumptions, development, and operation of the studies or models.
 - b. The hearing officer has discretion to receive in evidence by reference relevant, otherwise admissible, public records of the SWRCB 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 SWRCB 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 SWRCB 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 SWRCB'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.
 - d. Exhibits that rely on unpublished technical documents will be excluded unless the unpublished technical documents are admitted as exhibits.
5. **ELECTRONIC SUBMISSIONS:** Participants are encouraged to submit the following documents to the SWRCB 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 SWRCB and served on the other parties, unless the hearing officer specifies otherwise.

Any documents submitted or served electronically must be in Adobe™ Portable Document Format (PDF), except for Exhibit Identification Indexes, which must be in a version supported by Microsoft Excel 97 (preferred) or Word 97. Electronic submittals to the SWRCB of documents less than 5 megabytes in size may be sent via electronic mail to: WrHearing@waterrights.swrcb.ca.gov with subject of "Hardin Trust". Electronic submittals to the SWRCB of documents greater than 5 megabytes in size should be sent by mail, in PDF format, on ZIP™, JAZ™, or compact disk (CD™) media. Electronic service on participants shall be in the same format as submittals to the SWRCB, but should be submitted to the other participants by mail on CD.

Participants who agree to electronic service may request that specific documents be provided to them in paper copy. Requests should be made to the participant who

submitted the document, not to the SWRCB. 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 SWRCB will post a list of all exhibits submitted for the hearing on its website at <http://www.waterrights.ca.gov/hearings>.

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

- emphasize their written testimony on direct examination.² Each participant will be allowed up to two hours total to present all of its direct testimony.³
- 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, the hearing officer will decide whether the participant's witnesses will be cross examined as a panel. Cross examiners initially will be limited to one hour per witness or panel of witnesses. The hearing officer has discretion to allow additional time for cross examination if there is good cause demonstrated in an offer of proof. Any redirect examination and recross examination permitted by the 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 the hearing officer may allow a participant to designate a person technically qualified in the subject being considered to examine a witness. SWRCB members and the SWRCB's counsel may ask questions at any time, and the SWRCB members and staff may cross examine any witness.
- c. **Rebuttal:** After all participants have presented their cases in chief and their witnesses have been cross-examined, the hearing officer will allow participants to present rebuttal evidence. Rebuttal evidence is new evidence used to rebut evidence presented in another participant's case in chief. Rebuttal testimony and exhibits need not be submitted prior to the hearing. Rebuttal evidence is limited to evidence that is responsive to evidence presented in a case in chief, and it does not include evidence that should have been presented during the presenter's case in chief. It also does not include repetitive evidence. Cross-examination of rebuttal evidence will be limited to the scope of the rebuttal evidence.
- d. **Closing Statements and Legal Arguments:** At the close of the hearing or at other times if appropriate, the hearing officer may allow oral arguments or set a schedule for filing briefs or closing statements. If the hearing officer authorizes the participants to file briefs, five copies of each brief shall be submitted to the SWRCB, 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.
- e. **Large Format Exhibits:** Participants submitting large format exhibits such as maps, charts, and other graphics shall provide the original for the hearing record in a form that can be folded to 8 ½ x 11 inches. Alternatively, participants may supply, for the hearing record, a reduced copy of a large format original if it is readable.

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

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

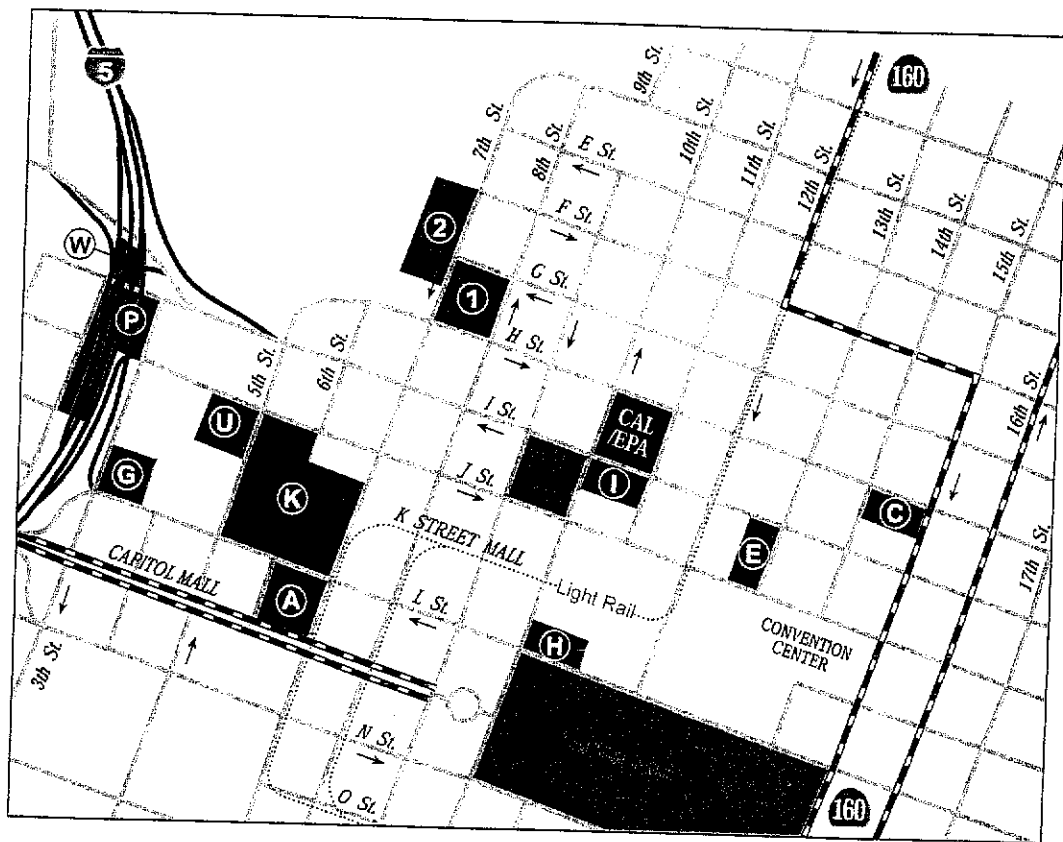
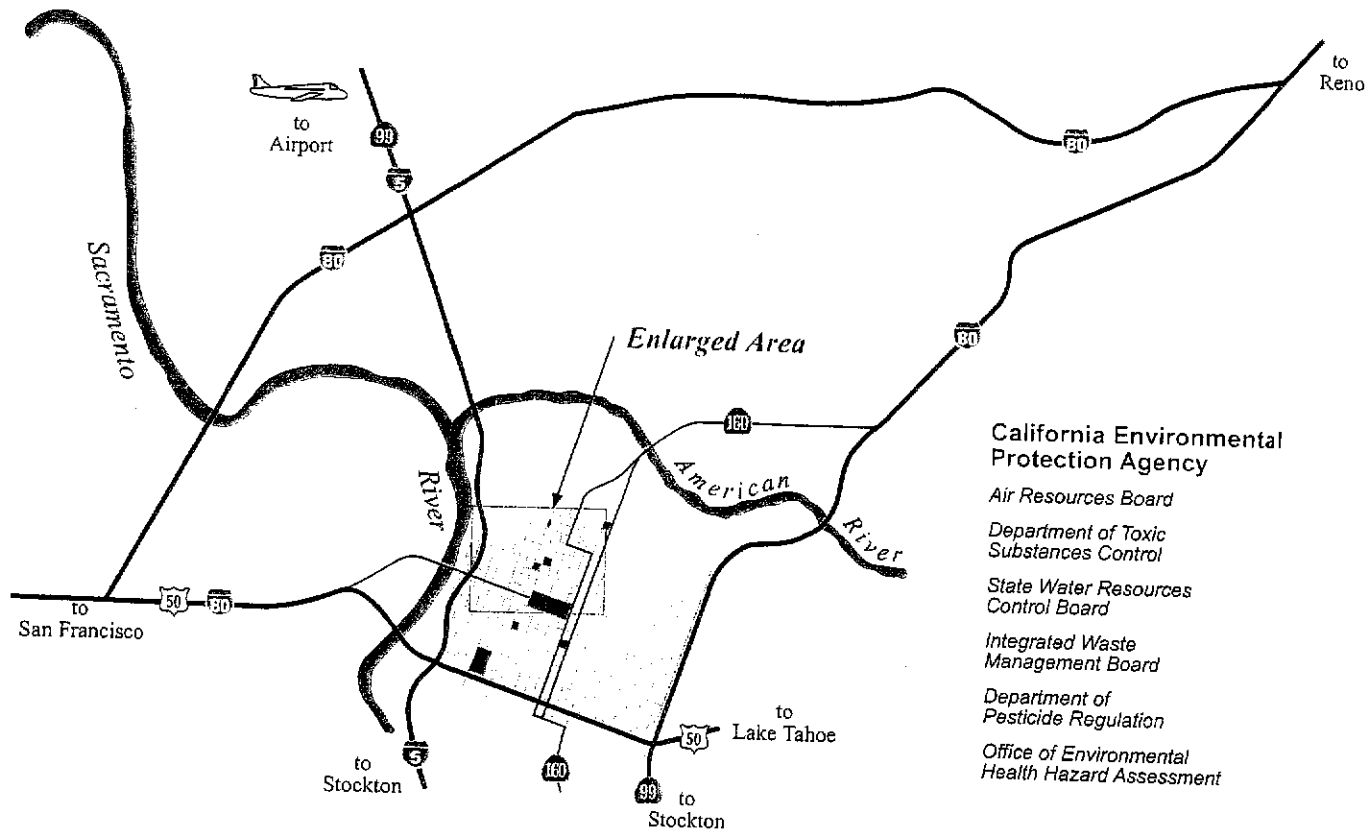
7. **AUDIO-VISUAL EQUIPMENT:** Participants who require Audio-Visual Equipment for their presentations should contact the Division one week prior to the first day of hearing to make arrangements with staff.
8. **EX PARTE CONTACTS:** During the pendency of this proceeding, commencing no later than the issuance of the Notice of Hearing, there will be no *ex parte* communications between SWRCB members or SWRCB staff and any of the participants regarding substantive issues within the scope of the proceeding. (Gov. Code, §§ 11430.10-11430.80.) Communications regarding noncontroversial procedural matters are permissible, but ordinarily should be directed to SWRCB staff, not SWRCB members. (Gov. Code, § 11430.20, subd. (b).)
9. **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.
10. **SUBMITTALS TO THE SWRCB:** Notices of Intent to Appear, written testimony and other exhibits 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: Ruben L. Mora
Phone: (916) 341-5387
Fax: (916) 341-5400
Email: WrHearing@waterrights.swrcb.ca.gov
With Subject of "Hardin Trust"

Exhibit Identification Index

Participant _____

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



- Lot 1 (7th & G St.)
\$0.75 ea. 1/2 hr.
- Lot 2 (7th & G St.)
\$0.75 ea. 1/2 hr.
- Lot A (7th & Capitol)
\$0.75 ea. 1/2 hr. for first 2 hrs.
\$1.50 ea. additional hr.
\$8.00 maximum charge
- Lot C (14th & H St.)
\$5.00 flat rate
- Lot G (3rd & L)
\$0.75 ea. 1/2 hr. for first 2 hrs.
\$1.25 ea. additional 1/2 hr.
\$13.00 daily maximum charge
- Lot H (10th & L)
\$1.25 each 1/2 hr.
\$15.00 daily maximum charge
- Lot I (10th & I, 11th & I)
\$1.00 each 1/2 hr.
\$12.00 daily maximum charge
- Lot K (6th & J/L, 7th & K)
\$0.75 ea. 1/2 hr. for first 2 hrs.
\$1.25 ea. additional 1/2 hr.
\$13.00 daily maximum charge
- Lot P (2nd & I)
\$0.75 ea. 1/2 hr. for first 3 hrs.
\$1.00 each additional 1/2 hr.
\$12.00 daily maximum charge
- Lot U (5th & J)
\$0.50 ea. 1/2 hr. for first 2 hrs.
\$1.00 ea. additional 1/2 hr.
\$12.00 maximum charge
- Lot W (2nd & I St.)
\$5.00 flat rate