

## State Water Resources Control Board

September 8, 2016

### VIA ELECTRONIC MAIL

TO: ENCLOSED SERVICE LIST OF PARTICIPANTS

### **SERVICE LIST OF PARTICIPANTS TO EXCHANGE INFORMATION: – Mike Passalacqua and Peder Hoy - Hearing to consider whether to impose Administrative Civil Liability and to issue a Cease and Desist Order**

In accordance with the State Water Resources Control Board's (State Water Board or Board) August 2, 2016 - [Notice of Public Hearing](#) (Notice), regarding the above subject hearing, a Service List of Participants who have submitted a Notice of Intent to Appear (NOI) and who have indicated intent to participate in the above-referenced hearing is enclosed.

The NOIs and other documents related to this hearing are posted on the Division of Water Rights project dedicated website:

[http://www.waterboards.ca.gov/waterrights/water\\_issues/programs/hearings/passalacqua\\_hoy/index.shtml](http://www.waterboards.ca.gov/waterrights/water_issues/programs/hearings/passalacqua_hoy/index.shtml)

As stated in the [August 10, 2016 email](#), the hearing officers granted the parties' postponement request of the October 14, 2016 hearing and the noon, September 14, 2016 exhibit deadline. The parties who submitted a Notice of Intent (NOI) form by the noon, August 19, 2016 deadline will have an opportunity to submit a revised form in the future if and when the hearing is rescheduled.

The following information regarding time limits at the hearing, tentative order of presentation of cases-in-chief and cross-examination, and *ex parte* communications is provided in the event the hearing is rescheduled.

### **Reminder of Time Limits**

The enclosure to the Notice -INFORMATION CONCERNING APPEARANCE AT WATER RIGHT HEARINGS – specified the following time limits for parties:

- **Opening Statements**: Opening statements will be limited to twenty (20) minutes.

At the beginning of a case-in-chief, the party or the party'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. Any policy-oriented statements by a party should be included in the opening statement. Opening statements may be submitted in writing.

- **Direct testimony**: Oral summaries by the witnesses of direct testimony submitted by parties presenting a case-in-chief will be limited to twenty (20) minutes per witness and up to one (1) hour total to present all of the party's direct testimony.

On direct, witnesses will be permitted to summarize the written testimony that they have submitted in advance of the hearing. Generally, a more focused summary is far more effective in a hearing than reading previously submitted testimony into the record.

- **Cross-Examination:** Cross-examination by each party will be limited to one (1) hour per witness or panel of witnesses.

Cross-examination of a witness will be permitted on the party's written submittals, the witness' oral testimony, and other relevant matters not covered in the direct testimony.

The hearing officers may, for good cause, approve a party's request for additional time to present direct testimony during the party's case-in-chief. The hearing officers may allow additional time for the oral direct testimony of the witness if the witness is adverse to the party presenting the testimony and the hearing officers are satisfied that the party could not produce written direct testimony for the witness. The hearing officers also have discretion to allow additional time for cross-examination if there is good cause demonstrated in an offer of proof.

**Tentative Order of Presentation: Cases-in-Chief**

The tentative order of presentation at the hearing will be:

1. Prosecution Team
2. Mike Passalaqua
3. Peder Hoy

**Tentative Order of Cross-Examination**

The tentative order of cross-examination of witnesses at the hearing will be:

1. Prosecution Team
2. Mike Passalaqua
3. Peder Hoy
4. The City and County of San Francisco
5. Modesto Irrigation District
6. Turlock Irrigation District

**Ex Parte Communications**

I would like to remind the parties that *ex parte* communications concerning substantive or controversial procedural issues relevant to this hearing are prohibited. Please be sure to copy the service list on any correspondence to the State Water Board members, and the hearing team related to this matter.

Questions regarding non-controversial procedural matters should be directed to Staff Counsel Nicole Kuenzi at (916) 322-4142 or by email to [Nicole.Kuenzi@waterboards.ca.gov](mailto:Nicole.Kuenzi@waterboards.ca.gov) (Gov. Code, § 11430.20, subd. (b).)

Sincerely,

*Jane Farwell-Jensen*

Jane Farwell-Jensen  
Environmental Scientist  
Hearings Unit

Enclosures: Service List of Participants, Notices of Intent to Appear

**SERVICE LIST OF PARTICIPANTS**  
Mike Passalacqua And Peder Hoy - Administrative Civil Liability  
and Cease And Desist Order Hearing  
**(October 14, 2016)**  
**POSTPONED**

Parties	
THE FOLLOWING <b><u>MUST BE SERVED</u></b> WITH WRITTEN TESTIMONY, EXHIBITS AND OTHER DOCUMENTS. (All have AGREED TO ACCEPT electronic service, pursuant to the rules specified in the hearing notice.)	
<b>MIKE PASSALQUA</b> Terpstra Henderson, A Professional Corporation Stacy L. Henderson 578 N. Wilma Avenue, Suite A Ripon, CA 95366 <a href="mailto:shenderson@thtlaw.com">shenderson@thtlaw.com</a>	<b>PEDER HOY</b> Spaletta Law P.C. Jennifer Spaletta Russel Frink P.O. Box 2660 Lodi, CA 95241 <a href="mailto:jennifer@spalettalaw.com">jennifer@spalettalaw.com</a> <a href="mailto:russell@spalettalaw.com">russell@spalettalaw.com</a>
<b>DIVISION OF WATER RIGHTS</b> Prosecution Team Andrew Tauriainen, Attorney III SWRCB Office of Enforcement 1001 I Street, 16th Floor Sacramento, CA 95814 <a href="mailto:andrew.tauriainen@waterboards.ca.gov">andrew.tauriainen@waterboards.ca.gov</a>	<b>THE CITY AND COUNTY OF SAN FRANCISCO</b> Jonathan Pais Knapp, Deputy City Attorney Office of the City Attorney 1390 Market Street, Suite 418 San Francisco, CA 94102 <a href="mailto:jonathan.knapp@sfgov.org">jonathan.knapp@sfgov.org</a>
<b>MODESTO IRRIGATION DISTRICT</b> Anna Brathwaite P.O. Box 4060 Modesto, CA 95352 <a href="mailto:anna.brathwaite@mid.org">anna.brathwaite@mid.org</a>	<b>TURLOCK IRRIGATION DISTRICT</b> Arthur Godwin MASON, ROBBINS, BROWNING & GODWIN 700 Loughborough Drive, Suite D Merced, CA 95348 <a href="mailto:agodwin@mrgb.org">agodwin@mrgb.org</a>

### NOTICE OF INTENT TO APPEAR

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

Draft Cease and Desist Order  
and Administrative Civil Liability  
against  
Mike Passalacqua and Peder Hoy

scheduled to commence  
Friday, October 14, 2016  
at 9:00 a.m.

**1) Check only one (1) of the following:**

- I/we intend to present a policy statement only.
- I/we intend to participate by cross-examination or rebuttal only.
- I/we plan to call the following witnesses to testify at the hearing. (Fill in the Following Table)

Name	Subject of Proposed Testimony	Estimated Length of Direct Testimony	Expert Witness (Yes/No)
Mike Passalacqua	Diverter Testimony	30 minutes	N
Peder Hoy	Diverter Testimony	1 hour	N
Peter Hoy	Diverter Testimony	1 hour	N
Chain of Title Expert - TBD	Evidence of riparian rights	1 hour	Y
Land Surveyor - TBD	Physical boundaries of riparian rights	1 hour	Y
State Board Staff	Enforcement Basis	1 hour	Possibly

(If more space is required, please add additional pages or use reverse side.) Please see attached page.

**2) Fill in the following information of the Participant, Party, Attorney, or Other Representative:**

Name (Print): Stacy L. Henderson

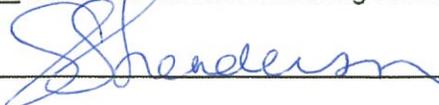
Mailing Address: Terpstra Henderson, A Professional Corporation  
578 N. Wilma Avenue, Suite A, Ripon, California 95366

Phone Number: (209) 599-5003 Fax Number: (209) 599-5008

E-mail: shenderson@thtlaw.com

Optional:

I/we decline electronic service of hearing-related materials.

Signature:  Date: 8/18/16

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

*Notice of Intent to Appear*

Note: Mike Passalaqua reserves the right to update this NOI. Because the Prosecution Team has not yet produced its file related to this enforcement action, discovery is continuing.

### NOTICE OF INTENT TO APPEAR

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

#### Mike Passalaqua and Peder Hoy – ACL/CDO Hearing

scheduled to commence  
October 14, 2016

**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 decline electronic service of hearing-related materials.
- I/we plan to call the following witnesses to testify at the hearing.

NAME	SUBJECT OF PROPOSED TESTIMONY	ESTIMATED LENGTH OF DIRECT TESTIMONY	EXPERT WITNESS (YES/NO)
Peder Hoy	Diverter Testimony	1 hour	N
Peter Hoy	Diverter Testimony	1 hour	N
Mike Passalaqua	Diverter Testimony	30 minutes	N
Chain of Title Expert - TBD	Evidence of riparian rights	1 hour	Y
Land Surveyor - TBD	Physical boundaries of riparian rights	1 hour	Y
State Board Staff	Enforcement Basis	1 hour	Maybe

(Note: Peder Hoy reserves the right to update this NOI. Because the Prosecution Team has not yet produced its file related to this enforcement action, discovery is continuing.)

Name, Address, Phone Number and Fax Number of Attorney or Other Representative:

Signature:  Dated: 8/17/16

Name (Print): Jennifer Spaletta (Spaletta Law P.C.)

Mailing Address: P.O. Box 2660, Lodi, CA 95241

Phone Number: (209) 224-5568 Fax Number: (209) 224-5589

E-mail: Jennifer@spalettalaw.com

**STATEMENT OF SERVICE**

**Passalaqua/Hoy CDO/ACL Hearing**

I hereby certify that on August 17, 2016, I submitted to the State Water Resources Control Board and caused a true and correct copy of the following document(s):

**Peder Hoy's Notice of Intent**

to be served **by Electronic Mail** (email) upon the parties listed below:

<b>Party Affiliation</b>	<b>Email Address</b>
Andrew Taurianien – Prosecution Team	<a href="mailto:Andrew.Tauriainen@waterboards.ca.gov">Andrew.Tauriainen@waterboards.ca.gov</a>
Hearing Officer Frances Spivey-Weber – State Water Resources Control Board	<a href="mailto:Wr_Hearing.Unit@waterboards.ca.gov">Wr_Hearing.Unit@waterboards.ca.gov</a>
Hearing Officer Dorene D'Adamo – State Water Resources Control Board	<a href="mailto:Wr_Hearing.Unit@waterboards.ca.gov">Wr_Hearing.Unit@waterboards.ca.gov</a>
Stacy Henderson – Counsel for Mike Passalaqua	<a href="mailto:shenderson@thtlaw.com">shenderson@thtlaw.com</a>

I certify that the foregoing is true and correct and that this document was executed on August 17, 2016  
Date

Signature:  \_\_\_\_\_

Name: Russell Frink, Esq.

Party/Affiliation: Peder Hoy

Address: P.O. Box 2660, Lodi, CA 95241

## NOTICE OF INTENT TO APPEAR

**Division of Water Rights Prosecution Team** plans to participate in the water right hearing regarding

Draft Cease and Desist Order  
and Administrative Civil Liability  
against  
Mike Passalacqua and Peder Hoy

**Originally scheduled to commence  
Friday, October 14, 2016  
at 9:00 a.m.  
rescheduled hearing TBD**

**1) Check only one (1) of the following:**

- I/we intend to present a policy statement only.  
 I/we intend to participate by cross-examination or rebuttal only.  
 I/we plan to call the following witnesses to testify at hearing. (Fill in the Following Table)

Name	Subject of Proposed Testimony	Estimated Length of Direct Testimony	Expert Witness (Yes/No)
John O'Hagan, Principal WRCE	Key Issues 1, 3, 4	10	Yes
Kathy Mrowka, Supervising WRCE	Key Issues 1, 2, 3, 4	10	Yes
Brian Coats, Senior WRCE	Key Issue 1	10	Yes
Jeffrey Yeazell, WRCE	Key Issue 1	5	Yes
Victor Vasquez, Senior WRCE	Key Issues 1, 2, 3, 4	10	Yes
Oxcar Macias, WRCE	Key Issues 1, 2, 3, 4	10	Yes
Additional Witnesses TBD	The Prosecution Team may revise the witness list as permitted in the Hearing Team's August 10, 2016, email, should the matter proceed to hearing.		
Rebuttal Witnesses TBD	The Prosecution Team will call rebuttal witnesses as necessary to address legal argument, evidence or testimony presented by the parties.		

(If more space is required, please add additional pages or use reverse side.)

**2) Fill in the following information of the Participant, Party, Attorney, or Other Representative:**

**Name (Print):** Andrew Tauriainen, Attorney III, Office of Enforcement

**Mailing Address:** State Water Resources Control Board, P.O. Box 100, Sacramento, CA 95812-0100

**Phone Number:** (916) 341-5445

**Fax Number:** (916) 341-5896

**E-Mail:** andrew.tauriainen@waterboards.ca.gov

Optional:

I/we decline electronic service of hearing-related materials.

Signature: Andrew Tauriainen Date: August 19, 2016

### NOTICE OF INTENT TO APPEAR

The City and County of San Francisco plans to participate in the water right hearing regarding  
(name of party or participant)

Draft Cease and Desist Order  
and Administrative Civil Liability  
against  
Mike Passalacqua and Peder Hoy

scheduled to commence  
Friday, October 14, 2016  
at 9:00 a.m.

**1) Check only one (1) of the following:**

- I/we intend to present a policy statement only.
- I/we intend to participate by cross-examination or rebuttal only.
- I/we plan to call the following witnesses to testify at the hearing. (Fill in the Following Table)

Name	Subject of Proposed Testimony	Estimated Length of Direct Testimony	Expert Witness (Yes/No)

(If more space is required, please add additional pages or use reverse side.)

**2) Fill in the following information of the Participant, Party, Attorney, or Other Representative:**

Name (Print): Jonathan Pais Knapp, Deputy City Attorney

Mailing Address: Office of the City Attorney

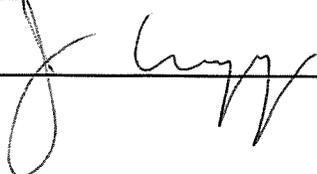
1390 Market Street, Suite 418, San Francisco, CA 94102

Phone Number: (415) 554-4261 Fax Number: (415) 554-8793

E-mail: jonathan.knapp@sfgov.org

Optional:

- I/we decline electronic service of hearing-related materials.

Signature:  Date: August 8, 2016

### NOTICE OF INTENT TO APPEAR

Modesto Irrigation District \_\_\_\_\_ plans to participate in the water right hearing regarding  
(name of party or participant)

Draft Cease and Desist Order  
and Administrative Civil Liability  
against  
Mike Passalaqua and Peder Hoy

**scheduled to commence  
Friday, October 14, 2016  
at 9:00 a.m.**

**1) Check only one (1) of the following:**

- I/we intend to present a policy statement only.
- I/we intend to participate by cross-examination or rebuttal only.
- I/we plan to call the following witnesses to testify at the hearing. (Fill in the Following Table)

Name	Subject of Proposed Testimony	Estimated Length of Direct Testimony	Expert Witness (Yes/No)

(If more space is required, please add additional pages or use reverse side.)

**2) Fill in the following information of the Participant, Party, Attorney, or Other Representative:**

Name (Print): Anna Brathwaite

Mailing Address: P.O. Box 4060

Modesto, CA 95352

Phone Number: (209) 526-7383 Fax Number: (209) 526-7383

E-mail: anna.brathwaite@mid.org

Optional:

- I/we decline electronic service of hearing-related materials.

Signature:  Date: 08/15/2016

2 **PROOF OF SERVICE**

3 I, SHELLY MCLEAN, declare that:

4  
5 I am employed in the County of Stanislaus, State of California. I am over the age of eighteen years  
6 and not a party to the within cause. My business address is 1231 Eleventh Street, Modesto,  
7 California 95354. On this date, in the following manner, I served the foregoing document(s)  
8 identified as:

9 **NOTICE OF INTENT OT APPEAR**

10 UNITED STATES MAIL [CCP §1013]: I enclosed the documents in a sealed envelope  
11 addressed to the following persons and placed the envelope for collection and mailing,  
12 following our ordinary business practices. I am readily familiar with our practice for  
13 collection and processing correspondence for mailing. On the same day that the  
14 correspondence is placed for collection and mailing, it is deposited in the ordinary course of  
15 business with the United States Postal Service, in a sealed envelope with postage thereon  
16 fully prepaid at Chico, California addressed as below:

17 FACSIMILE: Based on prior consent, I caused the documents to be sent to the following  
18 persons via telecopier/facsimile machine a true copy thereof to the parties indicated below:

19 OVERNIGHT DELIVERY [CCP §1013(c)]: I enclosed the documents in a sealed  
20 envelope provided by an overnight delivery carrier and addressed it to the persons identified  
21 below. I placed said envelope for collection at a regularly utilized drop box of the overnight  
22 carrier.

23  E-MAIL I caused the documents to be sent to the person listed below at the following e-  
24 mail address wrhearing@waterboards.ca.gov, and did not receive, within a reasonable time after  
25 the transmission, any electronic message or other indication that the transmission was  
26 unsuccessful:

27 I declare under penalty of perjury under the laws of the State of California that the foregoing  
28 is true and correct, and that this declaration was executed on August 16, 2016, at Sacramento,  
California.

Division of Water Rights  
State Water Resources Control Board  
Attn: Jane Farwell-Jensen  
P.O. Box 2000  
Sacramento, CA 95812-2000  
wrhearing@waterboards.ca.gov

\_\_\_\_\_  
SHELLY MCLEAN

### NOTICE OF INTENT TO APPEAR

TURLOCK IRRIGATION DISTRICT plans to participate in the water right hearing regarding  
(name of party or participant)

Draft Cease and Desist Order  
and Administrative Civil Liability  
against  
Mike Passalaqua and Peder Hoy

**scheduled to commence  
Friday, October 14, 2016  
at 9:00 a.m.**

**1) Check only one (1) of the following:**

- I/we intend to present a policy statement only.
- I/we intend to participate by cross-examination or rebuttal only.
- I/we plan to call the following witnesses to testify at the hearing. (Fill in the Following Table)

Name	Subject of Proposed Testimony	Estimated Length of Direct Testimony	Expert Witness (Yes/No)

(If more space is required, please add additional pages or use reverse side.)

**2) Fill in the following information of the Participant, Party, Attorney, or Other Representative:**

Name (Print): ARTHUR GODWIN

Mailing Address: MASON, ROBBINS, BROWNING & GODWIN, 700 Loughborough Drive,  
Suite D, Merced, CA 95348

Phone Number: (209) 383-9334 Fax Number: (209) 383-9386

E-mail: agodwin@mrgb.org

Optional:

- I/we decline electronic service of hearing-related materials.

Signature: Arthur Godwin Date: 8-19-2016