



# State Water Resources Control Board



Winston H. Hickox  
Secretary for  
Environmental  
Protection

## Executive Office

1001 I Street, 25<sup>th</sup> Floor, Sacramento, California 95814  
P.O. Box 100, Sacramento, California 95812-0100  
(916) 341-5615 ♦ FAX (916) 341-5621 ♦ [www.swrcb.ca.gov](http://www.swrcb.ca.gov)

Gray Davis  
Governor

*The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see our website at [www.swrcb.ca.gov](http://www.swrcb.ca.gov).*

**AUG 13 2003**

To: Enclosed Cachuma Hearing  
Service List

## CACHUMA PROJECT HEARING – APPLICATIONS 11331 AND 11332

Enclosed please find a notice of field orientation tour and supplemental notice of Phase 2 of the Cachuma Project hearing. Please review these materials carefully, as they contain important information concerning the upcoming hearing. The enclosed notice addresses most of the procedural issues raised at the pre-hearing conference held on May 13, 2003. This letter addresses two outstanding issues concerning the scope of Phase 2 that were raised at the pre-hearing conference.

The first issue is whether the scope of the hearing should be changed in light of the settlement agreement recently reached by the Cachuma Conservation Release Board, Santa Ynez River Water Conservation District (SYRWCD), Santa Ynez River Water Conservation District, Improvement District No. 1 (SYRWCD, ID#1), and the City of Lompoc. At the pre-hearing conference, parties to the agreement and the U.S. Bureau of Reclamation (Reclamation) suggested that the agreement resolves key hearing issues 4a, 4b, 5a, 5b, 6a, and 6b, which concern the releases necessary to satisfy downstream water rights, and whether to approve the change petitions filed by Reclamation.

At the present time, however, resolution of these issues is not final because they are related to the unresolved issue of the releases necessary to protect public trust resources. The settlement agreement is predicated on the assumption that the terms of the Biological Opinion issued by the National Marine Fisheries Service (NOAA Fisheries) are adequate to protect public trust resources. The agreement specifies procedures for conjunctive operation of the Cachuma Project so that, a certain percentage of the time, releases from the Above Narrows Account (ANA) for the benefit of SYRWCD also serve to meet the target rearing flows required by the Biological Opinion.

Key provisions of the settlement agreement are not effective, and the parties may terminate the agreement, unless the State Water Resources Control Board (SWRCB) adopts an order in this proceeding that makes certain technical amendments to the provisions governing the ANA, without material change. The agreement may not be effective and may be terminated if the SWRCB modifies Reclamation's permits in order to protect public trust resources in a manner that is different from the modifications advocated by the parties to the agreement. Accordingly, the key hearing issues concerning the releases necessary to satisfy downstream water rights and

*California Environmental Protection Agency*



AUG 13 2003

Cachuma Hearing Service List

- 2 -

whether to approve Reclamation's change petitions remain within the scope of the hearing. Although the key hearing issues have been retained in the enclosed supplemental notice, they have been modified slightly in recognition of the fact that a settlement agreement has been reached.

The second outstanding issue concerns my May 29, 2003 ruling that participants in Phase 2 will be allowed to present evidence on whether Reclamation's permits should be modified to address any impacts of Cachuma Project operations to public trust resources above Bradbury Dam. The Cachuma Member Units have requested reconsideration of my ruling. SYRWCD, ID#1 joins in this request; NOAA Fisheries and California Trout, Inc. oppose it. The Member Units argue that due process calls for reconsideration because the SWRCB's past rulings, reservation of jurisdiction over Reclamation's permits, and authority to protect public trust resources are "oriented" downstream of Bradbury Dam.

The request for reconsideration of my previous ruling is denied. The fact that SWRCB Order WR 94-5 and other past SWRCB rulings focused on public trust resources downstream of Bradbury Dam does not preclude the SWRCB from considering measures to protect public trust resources above the dam, provided that the SWRCB provides parties who could be affected with adequate notice and any action taken is consistent with the SWRCB's reserved jurisdiction or continuing authority. As described in my May 29 ruling, the September 25, 2000 hearing notice defines the hearing issues broadly and encompasses consideration of measures necessary to protect public trust resources above the dam. The Member Units and other parties may submit legal argument concerning the scope of the SWRCB's reserved jurisdiction and public trust authority in their closing briefs. Similarly, the Member Units may present evidence and argument during the hearing in support of their position that effective passage for steelhead requires further study.

If you have any questions about this ruling, please contact Dana Differding, Staff Counsel, at (916) 341-5188.


Sincerely,

  
Peter S. Silva  
Hearing Officer

Enclosures

cc: See next page

*California Environmental Protection Agency*

 Recycled Paper

**AUG 13 2003**

cc: Ms. Katherine Mrowka  
Mr. Andy Fecko  
Division of Water Rights  
State Water Resources Control Board  
1001 I Street, 14<sup>th</sup> Floor [95814]  
P.O. Box 2000  
Sacramento, CA 95812-2000

Ms. Dana C. Differding  
Staff Counsel  
Office of Chief Counsel  
State Water Resources Control Board  
1001 I Street, 22<sup>nd</sup> Floor [95814]  
P.O. Box 100  
Sacramento, CA 95812-0100

Cachuma Project Hearing  
Service List

Updated 8/22/03

Cachuma Conservation Release Board  
Mr. Gregory K. Wilkinson  
Best, Best & Krieger, LLP  
3750 University Avenue, Suite 400  
Riverside, CA 92501  
[gkwilkinson@bbklaw.com](mailto:gkwilkinson@bbklaw.com)

City of Solvang  
Mr. Christopher L. Campbell  
Baker, Manock & Jensen  
5260 N. Palm Avenue, Suite 421  
Fresno, CA 93704  
[clc@bmj-law.com](mailto:clc@bmj-law.com)

U.S. Bureau of Reclamation  
Mr. Stephen R. Palmer  
2800 Cottage Way, Room E-1712  
Sacramento, CA 95825  
No e-mail address  
Fax: (916) 978-5694

Department of Water Resources  
Mr. David Sandino  
1416 Ninth Street, Room 1118  
P.O. Box 942836  
Sacramento, CA 94236-0001  
[dsandino@water.ca.gov](mailto:dsandino@water.ca.gov)

Santa Ynez River Water Conservation  
District, Improvement District No. 1  
Mr. Gregory K. Wilkinson  
Best, Best & Krieger, LLP  
3750 University Avenue, Suite 400  
Riverside, CA 92501  
[gkwilkinson@bbklaw.com](mailto:gkwilkinson@bbklaw.com)

California Sportfishing  
Protection Alliance  
Mr. Jerry Mensch  
2553 Stonehaven Drive  
Sacramento, CA 95827  
[jerrymen@sbcglobal.net](mailto:jerrymen@sbcglobal.net)

City of Lompoc  
Ms. Sandra K. Dunn  
Somach, Simmons & Dunn  
813 Sixth Street, Third Floor  
Sacramento, CA 95814-2403  
[sdunn@lawssd.com](mailto:sdunn@lawssd.com)

California Trout, Inc.  
c/o Ms. Karen Kraus  
Environmental Defense Center  
906 Garden Street  
Santa Barbara, CA 93101  
[kkraus@edcnet.org](mailto:kkraus@edcnet.org)

Santa Barbara County Parks  
Ms. Terri Maus-Nisich  
Director of Parks  
610 Mission Canyon Road  
Santa Barbara, CA 93105  
[tmaus@co.santa-barbara.ca.us](mailto:tmaus@co.santa-barbara.ca.us)

Santa Ynez River Water  
Conservation District  
Mr. Ernest A. Conant  
Law Offices of Young Wooldridge  
1800 – 30<sup>th</sup> Street, Fourth Floor  
Bakersfield, CA 93301  
[econant@youngwooldridge.com](mailto:econant@youngwooldridge.com)

Department of Fish and Game  
Legal Office  
Ms. Nancee M. Murray  
1416 Ninth Street, 12<sup>th</sup> Floor  
Sacramento, CA 95814  
[nmurray@dfg.ca.gov](mailto:nmurray@dfg.ca.gov)

Christopher Keifer  
NOAA Office of General Counsel  
Southwest Region  
501 West Ocean Blvd., Ste 4470  
Long Beach, CA 90802-4213  
[Christopher.Keifer@noaa.gov](mailto:Christopher.Keifer@noaa.gov)

**Additions to Mailing List (Service  
of Exhibits and Testimony to  
Persons Denoted with a "\*" is Not  
Yet Required)**

Daniel P. Doport\*  
Morrison & Foerster, LLP  
101 Ygnacio Valley Road, Ste. 450  
Walnut Creek, CA 94596-8130  
[ddoport@mofo.com](mailto:ddoport@mofo.com)

Donald B. Mooney\*  
Law Office of Donald B. Mooney  
129 "C" Street, Suite 2  
Davis, CA 95616  
[dbmooney@dcn.davis.ca.us](mailto:dbmooney@dcn.davis.ca.us)



Winston H. Hickox  
Secretary for  
Environmental  
Protection

# State Water Resources Control Board

## Division of Water Rights

1001 I Street, 14th Floor, Sacramento, California 95814  
P.O. Box 2000, Sacramento, California 95812-2000  
(916) 341-5300 ♦ FAX (916) 341-5400 ♦ [www.swrcb.ca.gov](http://www.swrcb.ca.gov)



Gray Davis  
Governor

*The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see our website at [www.swrcb.ca.gov](http://www.swrcb.ca.gov).*

## NOTICE OF FIELD ORIENTATION TOUR AND SUPPLEMENTAL NOTICE OF PHASE 2 OF PUBLIC HEARING

**A Public Hearing Will Be Held To Consider Modifications to the U.S. Bureau of Reclamation's Water Right Permits 11308 and 11310 (Applications 11331 and 11332) To Protect Public Trust Values and Downstream Water Rights on the Santa Ynez River Below Bradbury Dam (Cachuma Reservoir)**

**And To Consider Change Petitions  
For Water Right Permits 11308 and 11310**

### Pre-Hearing Field Orientation Tour

The Field Orientation Tour will commence  
on Monday, September 8, 2003, at 10:00 a.m.

The tour will convene at the Goleta Sanitary District Plant, One William Moffett Place  
Goleta, California (across from the Santa Barbara Airport)

### Phase 2 Public Hearing

Phase 2 of the hearing will be held on Tuesday, October 21, 2003  
from 9:00 a.m. until 1:00 p.m.  
and continue, if necessary, on October 22 at 9:00 a.m. and October 23 at 9:00 a.m.

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

### SUBJECT OF THE HEARING

This hearing is being held to receive evidence that will assist the State Water Resources Control Board (SWRCB) in determining if modifications in permit terms and conditions for Permits 11308 and 11310 of the U.S. Bureau of Reclamation (Reclamation) are necessary to protect public trust resources and water right holders on the Santa Ynez River below Bradbury Dam. The SWRCB will also consider evidence on whether it is appropriate to approve change petitions requesting modifications in place and purpose of use for Permits 11308 and 11310.

*California Environmental Protection Agency*

## **PREVIOUS HEARING NOTICE AND PHASE 1 OF PUBLIC HEARING**

On September 25, 2000, the SWRCB issued a notice of public hearing for this proceeding. The notice indicated that the hearing would be conducted in two phases. Notices of Intent to Appear and participate in either or both phases of the hearing were due on October 11, 2000. Phase 1 of the hearing was conducted on November 6, 2000.

The purpose of this notice is to schedule a field orientation tour and Phase 2 of the hearing. This notice also modifies slightly the key hearing issues for Phase 2, sets deadlines for submitting written testimony and other exhibits in advance of the hearing, and prescribes other procedural requirements for the hearing. This notice supersedes the September 25, 2000 notice to the extent that this notice is different from the previous notice. Otherwise, the September 25, 2000 notice remains valid.

## **FIELD ORIENTATION TOUR**

The SWRCB has scheduled a field orientation tour to familiarize the hearing officer and staff with the Cachuma Project and the Santa Ynez River. All parties may attend the tour but may not present testimony, evidence or arguments related to the issues to be considered at the hearing.

Appropriate field attire is recommended. Lunch will not be provided and there may not be an opportunity to purchase lunch. All participants should bring their own bag lunch.

All those who attend the tour are responsible for their own transportation. Participants are encouraged to carpool. We intend to follow the itinerary set forth below, subject to variation at the discretion of the hearing officer. Participants may be required to pay a small parking fee to access the U.S. Forest Service Red Rock day-use area. SWRCB staff may be able to obtain a waiver of the fee for those participants who provide their vehicle license number to SWRCB staff before the tour. **Please contact Andrew Fecko at (916) 341-5393, or send an E-mail to [afecko@waterrights.swrcb.ca.gov](mailto:afecko@waterrights.swrcb.ca.gov) by August 27, 2003, to confirm whether you intend to attend the tour and provide your vehicle license number.**

<b><u>Time</u></b>	<b><u>Location and Topic of Interest</u></b>
10:00 a.m.	Meet at Goleta Sanitary District, One William Moffett Place, Goleta (across from the Santa Barbara Airport)
11:00 a.m.	View Santa Ynez River at Red Rock day-use area in Los Padres National Forest
11:45 a.m.	View Bradbury Dam and Hilton Creek
1:00 p.m.	Lunch and review of recreational facilities at Cachuma Lake Recreational Area
2:00 p.m.	View Santa Ynez River at Highway 154 Bridge monitoring point

- 2:00 p.m. View Santa Ynez River at Highway 154 Bridge monitoring point
- 2:30 p.m. View Santa Ynez River at Refugio Bridge crossing
- 3:00 p.m. View "without improvement" conditions at Jamala Road Bridge
- 3:30 p.m. View post-improvement conditions at Salsipuedes Creek

### **BACKGROUND**

Background information concerning this hearing is set forth in the September 25, 2000 notice. Since that notice was issued, there have been three significant developments relevant to this proceeding. First, on December 17, 2002, the Cachuma Conservation Release Board (a joint powers agency consisting of the City of Santa Barbara, Montecito Water District, Goleta Water District and Carpinteria Valley Water District), Santa Ynez River Water Conservation District, Santa Ynez River Water Conservation District Improvement District No. 1, and the City of Lompoc entered into a settlement agreement that resolves among the parties to the agreement issues pertaining to the operation of the Cachuma Project and protection of downstream water rights and public trust resources.

Second, the SWRCB has released for public comment a Draft EIR in connection with the SWRCB's consideration of modifications to Reclamation's permits.

Third, Reclamation filed a petition for an extension of time until 2015 to complete beneficial use of water under its permits. Approval of the petition would allow Reclamation to receive credit for licensing purposes for water use that would be authorized if the SWRCB approves the petitions for change in purpose and place of use that are being considered as part of this proceeding. The SWRCB issued a notice of the time extension petition on January 30, 2001. No protests were filed. Consideration of the time extension petition is not one of the subjects of this hearing.

### **KEY ISSUES**

The key hearing issues for Phase 1 of the hearing were set forth in the September 25, 2000 notice. The modified key hearing issues for Phase 2 are as follows:

3. Should Permits 11308 and 11310 be modified to protect public trust resources?
  - a. What flow requirements, including magnitude and duration of flows released from Bradbury Dam, are necessary to protect public trust resources, including, but not limited to, steelhead, red-legged frog, tidewater goby and wetlands, in the Santa Ynez River downstream of Bradbury Dam? What terms, conditions or

- recommendations contained in the Biological Opinion, if any, should be incorporated into Reclamation's water right permits?
- b. What other measures, if any, are necessary to protect public trust resources?
  - c. How will any proposed measures designed to protect public trust resources affect Reclamation and the entities that have water supply contracts with Reclamation?
  - d. What water conservation measures could be implemented in order to minimize any water supply impacts?
4. Has any senior, legal user of water been injured due to changes in water quality resulting from operation of the Cachuma Project?
- a. Has operation of the Cachuma Project affected water quality in the Lompoc Plains Groundwater Basin in a manner that impairs any senior water right holder's ability to beneficially use water under prior rights?
  - b. What permit terms, if any, should be included in Reclamation's water right permits to protect senior water right holders from injury due to changes in water quality?
5. Has operation of the Cachuma Project injured any senior water right holders through reduction in the quantity of water available to serve prior rights and, if so, to what extent?
- a. Condition 5 of Permits 11308 and 11310, as modified by Order WR 89-18, establishes an accounting methodology to determine the quantity of water that is available to serve prior rights on the Santa Ynez River downstream of Cachuma Reservoir. Should the accounting methodology be modified to protect prior rights or take into account new water supplies?
  - b. What other permit terms, if any, should be included in Reclamation's water right permits to protect senior water right holders from injury due to a reduction in the quantity of water available?
6. Should Reclamation's water right permits be modified in accordance with the Settlement Agreement Between Cachuma Conservation Release Board, Santa Ynez River Water Conservation District, Santa Ynez River Water Conservation District Improvement District No. 1, and the City of Lompoc Relating to the Operation of the Cachuma Project? Specifically, should Reclamation's water right permits be modified in accordance with the two enclosures submitted to the SWRCB by



Reclamation under cover of letter dated February 26, 2003, entitled "Proposed Modifications to WR 73-37 as amended by WR 89-18 Pertaining to Permits 11308 and 11310 (Applications 11331 and 11332)" and "Revised USBR Exhibit 1, February 1, 2003"?

7. Should the petitions for change in purpose and place of use be approved?
  - a. Will approval of the change petitions operate to the injury of any legal user of the water involved?
  - b. Will approval of the change petitions adversely affect fish, wildlife, or other public trust resources?

### **HEARING PARTICIPATION**

IF YOU WANT TO TAKE PART IN PHASE 2 OF THIS HEARING you should read carefully the enclosure entitled "Information Concerning Appearance at Water Right Hearing." That enclosure has been updated to address a number of procedural issues raised at the pre-hearing conference held on May 13, 2003, including the deadline to submit revised Notices of Intent to Appear with modified witness lists, procedures for the submittal and service of documents in electronic form, and page limits on closing briefs.

**Copies of witnesses' proposed testimony, exhibits, list of exhibits, and qualifications must be received by the SWRCB no later than October 15, 2003, at 12:00 p.m. and served on the parties who have indicated their intent to appear by that date.**

### **PARKING AND ACCESSIBILITY**

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

The Cal-EPA Headquarters Building second-floor hearing rooms are 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 hearing date. TTY users may contact the California Relay service at 1-800-735-2929 or voice line at 1-800-735-2922.

Due to enhanced security precautions at the Cal-EPA Headquarters Building, all visitors are required to register with security prior to attending any meeting. Visitors must go to the Visitor and Environmental Services Center, located just inside and to the left of the building's public entrance, to sign in and receive a visitor's badge. 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 drivers license, military identification card,

on any given day, the security check-in could take from three to fifteen minutes. Please allow adequate time to sign in before being directed to your meeting.

**IF YOU HAVE ANY QUESTIONS**

SWRCB Vice Chairman Peter S. Silva is the hearing officer presiding over this proceeding. Some or all of the other Board members may be present during the hearing. SWRCB hearing team members are Dana Differding, Staff Counsel, Andy Fecko, Environmental Scientist, and Katherine Mrowka, Senior Engineer. During the pendency of this proceeding, there will be no *ex parte* communications between SWRCB members or SWRCB staff and any of the participants regarding substantive or controversial procedural 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).)

for   
Debbie Irvin  
Clerk to the Board

Enclosures

Date: AUG. 13 2008

## Enclosure 1

### INFORMATION CONCERNING APPEARANCE AT WATER RIGHT 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 is available upon request or may be viewed at the Division of Water Rights' web site: <http://www.waterrights.ca.gov/Title23Regs.htm>.

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.

Participants shall file their requests in writing when seeking exceptions to procedural requirements. To provide time for other participants to respond, the hearing officer 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 water right holders whose exercise of their water rights may be modified as a result of this hearing, persons or entities who have filed an unresolved written complaint with the SWRCB concerning the subject matter of the hearing, and other interested persons or entities authorized by the hearing officer to participate in the hearing as parties. 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.

**NOTICE OF INTENT TO APPEAR:** Participants in this hearing were required to file a Notice of Intent to Appear by October 11, 2000. Participants may file a revised Notice of Intent to Appear that modifies the list of witnesses who will testify on the participant's behalf during Phase 2 of the hearing. **Any revised Notice of Intent to Appear and six copies thereof must be received by the SWRCB no later than 12:00 p.m. on September 10, 2003.** Each participant shall serve a copy of any revised Notice of Intent to Appear on each of the participants identified on the service list along with a statement of service that indicates the manner of service.

Any revised Notice of Intent to Appear must state the name and address of the participant; 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 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. 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.

In order to expedite the exchange of information and lower the cost of participating in the hearing, the SWRCB encourages participants to submit written opening statements, written testimony, exhibits, Exhibit Identification Indexes, and closing briefs 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 any revised Notice of Intent to Appear, or notify the SWRCB in writing by September 10, 2003.**

Following the receipt of any revised Notices of Intent to Appear and any other written notification concerning electronic service, the SWRCB will mail the participants a revised service list that indicates which participants agreed to accept electronic service.

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.<sup>1</sup> 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) six hard copies of each of its exhibits or (2) two hard copies and one electronic copy of each of its exhibits. Each participant also shall 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 hard copies of exhibits on those participants who do not agree to electronic service.

---

<sup>1</sup> 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.

With its exhibits for Phase 2 of this hearing, 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 hard 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 indexes and requisite number of exhibits for Phase 2 of this hearing, and a statement of service, must be received by the SWRCB by 12:00 p.m. on October 15, 2003, and served on the other participants on or before that date.** Parties may rely on exhibits that have been submitted during Phase 1 during Phase 2, and are not required to resubmit exhibits for Phase 2 that have been submitted for Phase 1.

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.

- 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 8½ 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 SWRCB in electronic form: written opening statements, written testimony, exhibits, Exhibit Identification Indexes, and closing briefs. In addition, the foregoing documents may be served electronically on those participants who have agreed to accept electronic service. Hard 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), Word 97 or Word 2000. Electronic submittals to the SWRCB of documents less than 5 megabytes in size may be sent via electronic mail to: [CHearing@waterrights.swrcb.ca.gov](mailto:CHearing@waterrights.swrcb.ca.gov). 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 hard copy. Requests should be made to the participants who submitted the document, not to the SWRCB. Participants who receive such a request shall provide a hard 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 and any exhibits submitted electronically on its website at <http://www.waterrights.ca.gov>.

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 provided an opportunity for presentation of nonevidentiary policy statements or comments by interested persons who were not participating in the hearing. Policy statements were heard at the start of the hearing on November 6, 2000.

b. **Presentation Of Cases In Chief:** Each participant may present a case in chief for Phase 2 of the hearing addressing the key issues identified in the hearing notice.<sup>2</sup> 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 for Phase 2, 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.<sup>3</sup> Each participant will be allowed up to two hours total to present all of its direct testimony.<sup>4</sup>

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

---

<sup>2</sup> A participant is not required to present evidence as part of a case in chief. Participants not presenting evidence as part of a case in chief will be allowed to participate through cross-examination, proper rebuttal, and presentation of opening and closing statements or briefs.

<sup>3</sup> 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.

<sup>4</sup> 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.

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. (a).) 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 will set a schedule for filing briefs or closing statements. Six hard copies of each brief or two hard copies and one electronic copy 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. Closing briefs shall not exceed 15 pages.

- 7. **EX PARTE CONTACTS:** During the pendency of this proceeding, 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).)



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.
9. **SUBMITTALS TO THE SWRCB:** Materials 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: Andrew Fecko  
Phone: (916) 341-5393  
Fax: (916) 341-5400

Email: [CHearing@waterrights.swrcb.ca.gov](mailto:CHearing@waterrights.swrcb.ca.gov)

With Subject of "Cachuma Project Hearing – Applications 11331 and 11332"

## Staff Exhibits By Reference

### Accepted into Evidence in Phase I

1. Application 11331 (Permit 11308) – Cat. 1, Volumes 1 to 37; Cat. 2., Volumes 1 to 7; Cat. 20, Vol. 5, USBR Ex. 20; application and change petition maps
2. Application 11332 (Permit 11310) – Cat. 1, Volumes 1 to 3, application and change petition maps
3. Negative Declaration, Changes to the Permitted Place and Purpose of Use for the Cachuma Project, Santa Barbara County, SWRCB Permits 11308 and 11310, Cachuma Operations and Maintenance Board, adopted November 2, 1998
4. Addendum to Final EIR for the Dos Pueblos Golf Links Project Regarding Water Service from Goleta Water District and Related Approvals dated July 1998, prepared by Goleta Water District and County of Santa Barbara. Final EIR (92-EIR-16; SCH 92041056)
5. Final EIR/EIS for the Cachuma Project Contract Renewal, Volumes 1 and II, including appendices and Fish Resources Technical Report, December 1995
6. Santa Ynez River Vegetation Monitoring Study, Santa Barbara County, CA, Final Phase I Report, April 2000, A11331, Cat. 9, Volume 7
7. Draft Lower Santa Ynez River Fish Management Plan, Volumes I and II, April 20, 1999 - A11331, Cat. 2, Volume 15
8. Evaluation of Ground-Water Flow and Solute Transport in the Lompoc Area, U.S. Geological Survey Report 97-4056
9. Endangered Species Act Section 7 Consultation, Biological Opinion, U.S. Bureau of Reclamation Operation and Maintenance of the Cachuma Project on the Santa Ynez River in Santa Barbara County, California, September 11, 2000

### To Be Offered into Evidence in Phase II

10. Draft Environmental Impact Report (EIR) for the Cachuma Project For Review of Reclamation's Water Right Permits, including all references listed in section 10 of the Draft EIR
11. Final EIR for the Cachuma Project for Review of Reclamation's Water Right Permits, including all references listed in the Final EIR
12. Application 11331 (Permits 11308) – Cat. 1, Volumes 38, 39

**Exhibit Identification Index**

Participant \_\_\_\_\_

<b>Status as Evidence</b>				
<b>Exhibit No.</b>	<b>Description</b>	<b>Introduced</b>	<b>Accepted</b>	<b>By Official Notice</b>

**NOTICE OF INTENT TO APPEAR**

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

**PHASE 2 OF CACHUMA PROJECT HEARING**  
 Applications 11331 and 11332

**Scheduled for**  
October 21, 22, and 23, 2003

- 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	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

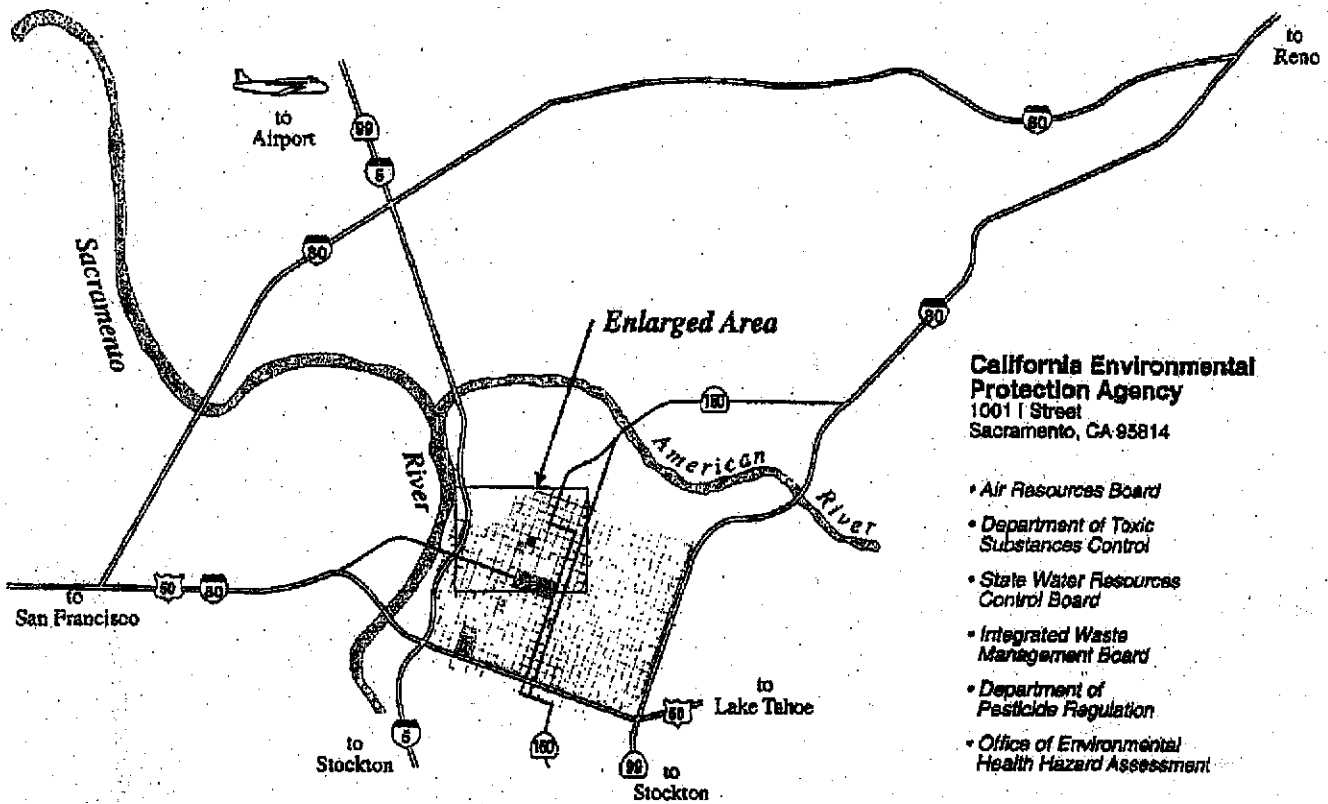
Signature: \_\_\_\_\_ Dated: \_\_\_\_\_

Name (Print): \_\_\_\_\_

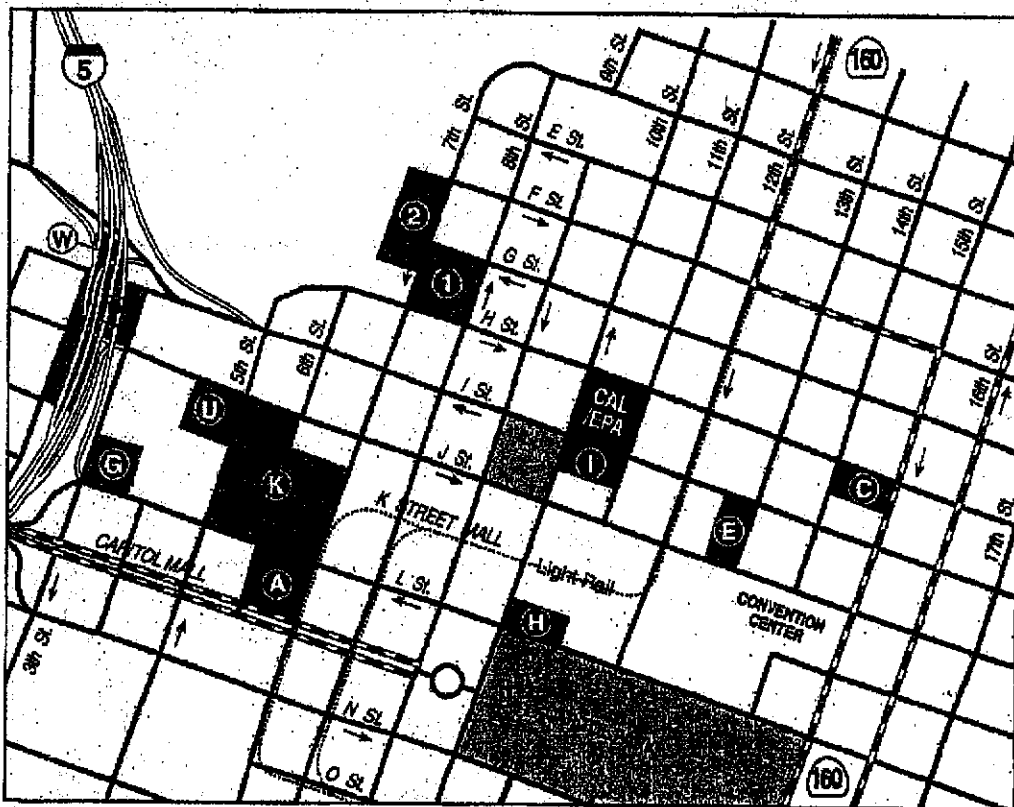
Mailing Address: \_\_\_\_\_

Phone Number: ( ) \_\_\_\_\_ Fax Number: ( ) \_\_\_\_\_

E-mail Address: \_\_\_\_\_



### Parking Lot Locations



- 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 & L, 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 & F)  
\$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