



Alan C. Lloyd, Ph.D.
Agency Secretary

State Water Resources Control Board

Division of Water Rights

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Arnold Schwarzenegger
Governor

NOTICE OF PUBLIC HEARING

**The State Water Resources Control Board will hold a Hearing
to Determine Whether to Adopt Draft Cease and Desist Orders
against the
United States Bureau of Reclamation
and
California Department of Water Resources**

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

**Commencing at 10:00 a.m. on Monday, October 24, 2005
at
Joe Serna, Jr./Cal-EPA Building
1001 I Street, Second Floor, Sierra Hearing Room
Sacramento, CA**

SUBJECT OF HEARING

The purpose of this hearing is for the State Water Resources Control Board (State Water Board or Board) to receive evidence relevant to determining whether to adopt draft Cease and Desist Orders No. 262.31-16 and 262.31-17 against the United States Bureau of Reclamation (USBR) and the California Department of Water Resources (DWR), respectively, with the statements of facts and information set forth in the draft orders.

BACKGROUND

Water Code section 1831, subdivision (a), provides that when the State Water Board determines that any person is violating, or threatening to violate, any requirement described in subdivision (d) of section 1831, the Board may issue an order to that person to cease and desist from that violation. The State Water Board may issue a cease and desist order (CDO) only after notice and an opportunity for hearing. Such notice shall be by personal notice or by certified mail, and shall inform the person allegedly engaged in the violation (respondent) that he or she may request a hearing within 20 days after the date of receiving the notice. The notice shall contain a statement of facts and information showing the violation. Unless the State Water Board receives a timely written request for a hearing, the State Water Board may adopt a CDO without a hearing. In the case of each of the draft CDOs to be considered in this hearing, the respondent requested a hearing.

California Environmental Protection Agency

License 1986 (Application 23) and Permits 11315, 11316, 11885, 11886, 11887, 11967, 11968, 11969, 11970, 11971, 11972, 11973, 12364, 12721, 12722, 12723, 12725, 12726, 12727, 12860, 15735, 16597, 16600, and 20245 (Applications 13370, 13371, 234, 1465, 5638, 5628, 15374, 15375, 15376, 16767, 16768, 17374, 17376, 5626, 9363, 9364, 9366, 9367, 9368, 15764, 22316, 14858A, 19304, and 14858B, respectively) of the USBR and Permits 16478, 16479, 16481, 16482, and 16483 (Applications 5630, 14443, 14445A, 17512, and 17514A, respectively) of the DWR are subject to conditions imposed by Water Right Decision 1641, revised March 15, 2000, in accordance with Order WR 2000-02, (hereinafter revised Decision 1641).

The USBR and the DWR are jointly and severally responsible for meeting water quality objectives, including certain water salinity objectives in the southern Delta, as described in Table 2 of revised Decision 1641.

USBR

On May 3, 2005, the Chief of the Division of Water Rights (Division) issued draft CDO No. 262.31-16 to the USBR regarding alleged threatened violation of the license and permits listed above. If the State Water Board adopts the draft CDO, it would find that the USBR is threatening to violate the conditions of its license and permits requiring the USBR to meet the 0.7 millimhos per centimeter (mmhos/cm) electrical conductivity (EC) objective at all of the southern Delta compliance locations between April 1 and August 31, as required by revised Decision 1641. The CDO would also require the USBR, in cooperation with the DWR, to take specific corrective actions under a time schedule. A copy of draft CDO No. 262.31-16 is enclosed.

By letter dated May 20, 2005, the USBR requested a hearing.

DWR

On May 3, 2005, the Chief of the Division issued draft CDO No. 262.31-17 to the DWR regarding alleged threatened violation of the permits listed above. If the State Water Board adopts the draft CDO, it would find that the DWR is threatening to violate the conditions of its permits requiring the DWR to meet the 0.7 mmhos/cm EC objective at three of the southern Delta compliance locations between April 1 and August 31, as required by revised Decision 1641. The CDO would also require the DWR, in cooperation with the USBR, to take specific corrective actions under a time schedule. A copy of draft CDO No. 262.31-17 is enclosed.

By memorandum dated May 23, 2005, the DWR requested a hearing.

KEY ISSUES

- 1.) Should the State Water Board issue a Cease and Desist Order to the United States Bureau of Reclamation in response to draft CDO No. 262.31-16? If a cease and desist order should be

issued, what modifications should be made to the measures in the draft order, and what is the basis for such modifications?

- 2.) Should the State Water Board issue a Cease and Desist Order to the Department of Water Resources in response to draft CDO No. 262.31-17? If a cease and desist order should be issued, what modifications should be made to the measures in the draft order, and what is the basis for such modifications?

ABOUT THIS HEARING

In this hearing, there will be a staff prosecutorial team who will be a party in the hearing. The prosecutorial team members will be Larry Lindsay, Water Resources Control Engineer; Mark Stretars, Senior Water Resources Control Engineer; John O'Hagan, Supervising Water Resources Control Engineer; and Erin Mahaney, Staff Counsel. The prosecutorial team is separated by an ethical wall from the hearing team, 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 hearing team consists of the Board members and the staff assisting the Board members with the hearing.

State Water Board Members Peter S. Silva and Tam M. Doduc will preside as hearing officers over this proceeding. Other Board members may be present during the hearing. State Water Board staff hearing team members will include Barbara Leidigh, Staff Counsel IV; Diane Riddle, Environmental Scientist; and Jean McCue, Water Resources Control Engineer. The hearing staff will assist the hearing officers and the other members of the State Water Board during the hearing.

HEARING PARTICIPATION

IF YOU WANT TO TAKE PART IN THIS HEARING, you should carefully read the enclosure entitled "Information Concerning Appearance at Water Right Hearings." As stated in that enclosure, parties intending 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 **noon on Thursday, September 8, 2005**.

To facilitate exchange of testimony, exhibits and witness qualifications, on or about **Tuesday, September 13, 2005**, the State Water Board will mail out a list of those parties who have indicated an intent to participate in the hearing.

Copies of witnesses' proposed testimony, exhibits, list of exhibits, and qualifications 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 **noon on Thursday, September 29, 2005**.

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 Sierra Hearing Room is accessible to persons with disabilities.

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 from three to fifteen minutes. Please allow adequate time to sign in before being directed to your meeting.

IF YOU HAVE ANY QUESTIONS

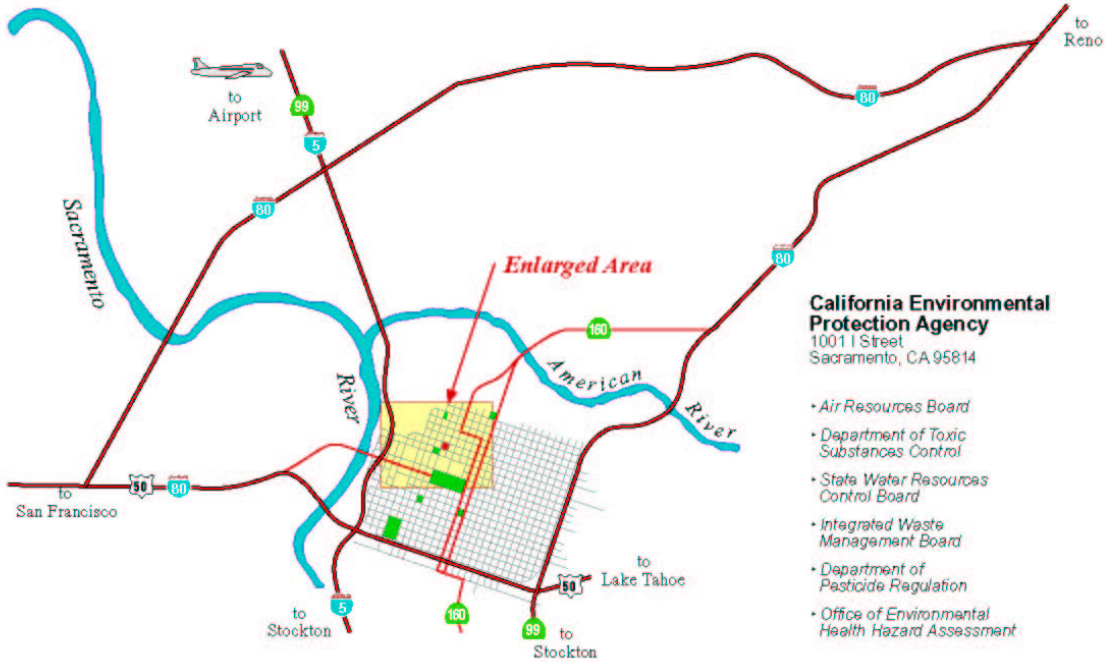
During the pendency of this proceeding and commencing no later than the issuance of this notice, there shall be no *ex parte* communications between State Water Board members or State Water Board hearing team staff and any of the other participants regarding substantive or controversial procedural matters 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 Barbara Leidigh, at (916) 341-5190.


Debbie Irvin
Clerk to the Board

Date: AUG 4 2005

Enclosures

Enclosure 1



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.)

STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS

ORDER WR 2005 – xxx – DWR

In the Matter of Permits and License¹ of the
UNITED STATES BUREAU OF RECLAMATION
Cease and Desist Order 262.31-16

SOURCE: Sacramento and San Joaquin Rivers and Sacramento-San Joaquin Delta Channels
COUNTY: San Joaquin

The State Water Resources Control Board (State Water Board) is authorized under California Water Code section 1831, subdivision (a), to issue a Cease and Desist Order (CDO) when it determines that any person is violating, or threatening to violate, any requirement described in section 1831, subdivision (d). Under section 1831, subdivision (d) of the Water Code, the State Water Board may issue a CDO in response to a violation or threatened violation of any of the following:

- 1) The prohibition set forth in section 1052 against the unauthorized diversion or use of water subject to division 2 (commencing with section 1000) of the Water Code.²
- 2) Any term or condition of a permit, license, certification, or registration issued under division 2 of the Water Code.
- 3) Any decision or order of the State Water Board issued under part 2 (commencing with section 1200) of division 2 of the Water Code, section 275, or article 7 (commencing with section 13550) of chapter 7 of division 7 of the Water Code, in which decision or order the person to whom the CDO will be issued, or a predecessor in interest to that person, was named as a party directly affected by the decision or order.

On **[DATE]**, and in accordance with the provisions of section 1834 of the California Water Code, the State Water Board provided notice of the CDO to the United States Bureau of Reclamation (USBR) for the threatened violation of a term or condition of a license or permit issued under division 2 of the Water Code. The Division of Water Rights (Division) did not receive a request for hearing within 20 days from the date when the USBR received the notice of the CDO. In accordance with State Water Board Resolution 2002-0106, attachment, section 2.8.1, the Chief of the Division is authorized to issue a CDO pursuant to Water Code section 1831 when a notice of cease and desist has been issued and no hearing has been requested within the period provided under Water Code section 1834.

¹ License 1986 (Application 23) and Permits 11315, 11316, 11885, 11886, 11887, 11967, 11968, 11969, 11970, 11971, 11972, 11973, 12364, 12721, 12722, 12723, 12725, 12726, 12727, 12860, 15735, 16597, 16600, and 20245 (Applications 13370, 13371, 234, 1465, 5638, 5628, 15374, 15375, 15376, 16767, 16768, 17374, 17376, 5626, 9363, 9364, 9366, 9367, 9368, 15764, 22316, 14858A, 19304, and 14858B, respectively).

² Water Code section 1052, subdivision (a) states that “The diversion or use of water subject to this division other than as authorized in this division is a trespass.”

FACTS AND INFORMATION

The facts and information upon which this CDO is based are the following:

1. The USBR currently owns the permits and license identified in footnote 1. These permits and license are subject to conditions imposed by Water Right Decision 1641, revised March 15, 2000, in accordance with Order WR 2000-02, (hereinafter revised Decision 1641).
2. As a condition of USBR's permits and license, revised Decision 1641 requires the USBR to meet water quality objectives, which are identified in Table 2 of the decision, in the southern Delta at the following locations:
 - 1) San Joaquin River at Airport Way Bridge, Vernalis (Interagency Station No. C-10);
 - 2) San Joaquin River at Brandt Bridge (Interagency Station No. C-6);
 - 3) Old River near Middle River (Interagency Station No. C-8); and
 - 4) Old River at Tracey Road Bridge (Interagency Station No. P-12).
3. Table 2 currently requires a maximum 30-day running average of mean daily EC (mmhos/cm) of 0.7 in April through August and 1.0 in September through March at the four locations listed above during all types of water years. Table 2 further specifies that the 0.7 EC objective for Interagency Stations number C-6, C-8, and P-12, which became effective on April 1, 2005, may be replaced by the 1.0 EC objective from April through August after April 1, 2005. The 1.0 EC objective is authorized if permanent barriers are constructed, or equivalent measures are implemented, in the southern Delta and an operations plan that reasonably protects southern Delta agriculture is prepared by the Department of Water Resources (DWR) and USBR and approved by the Executive Director of the State Water Board.
4. The DWR and the USBR currently install a temporary barrier at the head of Old River near the confluence with the San Joaquin River in the spring and fall of most years for the protection of fish. In order to mitigate the effects of the Head of Old River temporary barrier on water levels and circulation patterns in the southern Delta, the DWR and the USBR install three temporary barriers on other Delta channels during the growing season.
5. As of the date of this order, the permanent barriers planned for the South Delta Improvements Program (SDIP) have not been constructed and no equivalent measures have been implemented. The DWR provided information at the March 14, 2005 State Water Board workshop that the permanent barriers would not be operational until 2008. The DWR and USBR have not prepared an operations plan for approval by the Executive Director of the State Water Board. Therefore, the EC standard at Interagency Stations number C-6, C-8, and P-12 from April through August and during all types of water years is now a maximum 30-day running average mean daily EC (mmhos/cm) of 0.7.
6. On February 14, 2005, the DWR and USBR jointly submitted two change petitions to the Division: (1) a Petition for Change under Water Code section 1700; and (2) a Petition for Temporary Urgency Change under Water Code section 1435. Both petitions state that the permanent barriers are not complete and request that the State Water Board extend the effective date for the southern Delta salinity objective of 0.7 EC from April 1, 2005 to December 31, 2008. The accompanying cover letter addressed to Ms. Victoria Whitney, Chief, Division of Water Rights, states that if the 0.7 EC objective is imposed, then DWR and USBR could be forced to release large quantities of water to meet the objective and that it is unlikely that the releases alone would

result in compliance. The USBR and DWR also acknowledge that they may be subject to State Water Board enforcement action if the petitions are not approved. On February 24, 2005, the State Water Board issued Order WRO 2005-009, which denied the Petition for Temporary Urgency Change. Neither the USBR nor any other party petitioned the State Water Board to reconsider Order WRO 2005-009.

7. The DWR provided information about the SDIP at the March 14, 2005 State Water Board workshop. The presentation included actual data and estimated data indicating that mean daily EC (mmhos/cm) may exceed 0.7 in April through August during some years, even with temporary barriers installed.
8. The USBR's threatened violation of the conditions of its license and permits requiring the USBR to meet the 0.7 EC objective between April and August, as required by revised Decision 1641, is subject to issuance of a Cease and Desist Order in accordance with California Water Code section 1831.

IT IS HEREBY ORDERED that the USBR, in cooperation with DWR, shall take the following corrective actions and satisfy the following time schedule:

1. The USBR shall ensure the SDIP permanent barriers are installed and operational, or equivalent measures are implemented by January 1, 2009. Within 60 days of issuance of this CDO, the USBR shall submit to the Division Chief a detailed schedule, including planned completion dates for key events leading to completion of the permanent barriers by January 1, 2009. If the schedule provides for implementation of equivalent measures, the USBR shall submit information establishing that those measures are equivalent to the installation of permanent barriers. The schedule is subject to approval by the Executive Director of the State Water Board in regard to its completeness and inclusion of significant project milestones. The USBR shall submit any additional information or revisions to the schedule within the period specified by the Executive Director. The USBR shall implement the schedule as approved by the Executive Director.
2. In the event that the USBR projects a potential violation of the 0.7 EC objective for Interagency Stations C-6, C-8, and P-12, prior to construction of the permanent barriers or implementation of the approved equivalent measures, the USBR shall timely inform the State Water Board of the potential violation and describe the corrective actions being initiated to avoid the violation. Corrective actions may include additional releases from Central Valley Project (Project) facilities, reduction in exports, recirculation of diverted water to the San Joaquin River, or purchases of water under transfers from other entities.
3. If a violation of the 0.7 EC objective for Interagency Stations C-6, C-8, and P-12 occurs, the USBR shall report to the State Water Board (1) the length of time over which the violation occurred, (2) the corrective actions taken to curtail the violation, and (3) the amount of water bypassed or released from Project supplies, the net reduction in exports, or measured quantity of other actions, if any, taken specifically to correct the violation. The USBR shall also identify the amount of its Project supplies remaining for beneficial uses.
4. Every three months, commencing on the month following the date of this order, the USBR shall submit to the State Water Board a status report on construction of each barrier and an updated projection of the permanent barrier project's final completion date and initial operational date.

Upon the failure of any person to comply with a CDO issued by the State Water Board pursuant to this chapter, the Attorney General, upon the request of the State Water Board, shall petition the superior court for the issuance of prohibitory or mandatory injunctive relief as appropriate, including a temporary restraining order, preliminary injunction, or permanent injunction. (Wat. Code, § 1845, subd. (a).) Any person or entity who violates a CDO may be liable for a sum not to exceed one thousand dollars (\$1,000) for each day in which the violation occurs. (Wat. Code, § 1845, subd. (b)(1).)

STATE WATER RESOURCES CONTROL BOARD

Victoria A. Whitney, Chief
Division of Water Rights

Dated:

STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS

ORDER WR 2005 – xxx – DWR

In the Matter of Permits¹ of the
DEPARTMENT OF WATER RESOURCES
Cease and Desist Order 262.31-17

SOURCE: Sacramento and San Joaquin Rivers and Sacramento-San Joaquin Delta Channels
COUNTY: San Joaquin

The State Water Resources Control Board (State Water Board) is authorized under California Water Code section 1831, subdivision (a), to issue a Cease and Desist Order (CDO) when it determines that any person is violating, or threatening to violate, any requirement described in section 1831, subdivision (d). Under section 1831, subdivision (d) of the Water Code, the State Water Board may issue a CDO in response to a violation or threatened violation of any of the following:

- 1) The prohibition set forth in section 1052 against the unauthorized diversion or use of water subject to division 2 (commencing with section 1000) of the Water Code.²
- 2) Any term or condition of a permit, license, certification, or registration issued under division 2 of the Water Code.
- 3) Any decision or order of the State Water Board issued under part 2 (commencing with section 1200) of division 2 of the Water Code, section 275, or article 7 (commencing with section 13550) of chapter 7 of division 7 of the Water Code, in which decision or order the person to whom the CDO will be issued, or a predecessor in interest to that person, was named as a party directly affected by the decision or order.

On **[DATE]**, and in accordance with the provisions of section 1834 of the California Water Code, the State Water Board provided notice of the CDO to the Department of Water Resources (DWR) for the threatened violation of a term or condition of a license or permit issued under division 2 of the Water Code. The Division of Water Rights (Division) did not receive a request for hearing within 20 days from the date when the DWR received the notice of the CDO. In accordance with State Water Board Resolution 2002-0106, attachment, section 2.8.1, the Chief of the Division is authorized to issue a CDO pursuant to Water Code section 1831 when a notice of cease and desist has been issued and no hearing has been requested within the period provided under Water Code section 1834.

¹ Permits 16478, 16479, 16481, 16482, and 16483 (Applications 5630, 14443, 14445A, 17512, and 17514A, respectively).

² Water Code section 1052, subdivision (a) states that “The diversion or use of water subject to this division other than as authorized in this division is a trespass.”

FACTS AND INFORMATION

The facts and information upon which this CDO is based are the following:

1. The DWR currently owns the water right permits identified in footnote 1. These permits are subject to conditions imposed by Water Right Decision 1641, revised March 15, 2000, in accordance with Order WR 2000-02 (hereinafter revised Decision 1641).
2. As a condition of the DWR's permits, revised Decision 1641 requires the DWR to meet water quality objectives, which are identified in Table 2 of the decision, in the southern Delta at the following locations:
 - 1) San Joaquin River at Airport Way Bridge, Vernalis (Interagency Station No. C-10);
 - 2) San Joaquin River at Brandt Bridge (Interagency Station No. C-6);
 - 3) Old River near Middle River (Interagency Station No. C-8); and
 - 4) Old River at Tracey Road Bridge (Interagency Station No. P-12).
3. Table 2 currently requires a maximum 30-day running average of mean daily EC (mmhos/cm) of 0.7 in April through August and 1.0 in September through March at the four locations listed above during all types of water years. Table 2 further specifies that the 0.7 EC objective for Interagency Stations number C-6, C-8, and P-12, which became effective on April 1, 2005, may be replaced by the 1.0 EC objective from April through August after April 1, 2005. The 1.0 EC objective is authorized if permanent barriers are constructed, or equivalent measures are implemented, in the southern Delta and an operations plan that reasonably protects southern Delta agriculture is prepared by the DWR and United States Bureau of Reclamation (USBR) and approved by the Executive Director of the State Water Board.
4. The DWR and the USBR currently install a temporary barrier at the head of Old River near the confluence with the San Joaquin River in the spring and fall of most years for the protection of fish. In order to mitigate the effects of the Head of Old River temporary barrier on water levels and circulation patterns in the southern Delta, the DWR and the USBR install three temporary barriers on other Delta channels during the growing season.
5. As of the date of this order, the permanent barriers planned for the South Delta Improvements Program (SDIP) have not been constructed and no equivalent measures have been implemented. The DWR provided information at the March 14, 2005, State Water Board workshop that the permanent barriers would not be operational until 2008. The DWR and USBR have not prepared an operations plan for approval by the Executive Director of the State Water Board. Therefore, the EC standard at Interagency Stations number C-6, C-8, and P-12 from April through August and during all types of water years is now a maximum 30-day running average mean daily EC (mmhos/cm) of 0.7.
6. On February 14, 2005, the DWR and USBR jointly submitted two change petitions to the Division: (1) a Petition for Change under Water Code section 1700; and (2) a Petition for Temporary Urgency Change under Water Code section 1435. Both petitions state that the permanent barriers are not complete and request that the State Water Board extend the effective date for the southern Delta salinity objective of 0.7 EC from April 1, 2005 to December 31, 2008. The accompanying cover letter addressed to Ms. Victoria Whitney, Chief, Division of Water Rights, states that if the 0.7 EC objective is imposed, then DWR and USBR could be forced to release large quantities of water to meet the objective and that it is unlikely that the releases alone would

result in compliance. The USBR and DWR also acknowledge that they may be subject to State Water Board enforcement action if the petitions are not approved. On February 24, 2005, the State Water Board issued Order WRO 2005-009, which denied the Petition for Temporary Urgency Change. Neither the DWR nor any other party petitioned the State Water Board to reconsider Order WRO 2005-009.

7. The DWR provided information about the SDIP at the March 14, 2005 State Water Board workshop. The presentation included actual data and estimated data indicating that mean daily EC (mmhos/cm) may exceed 0.7 in April through August during some years, even with temporary barriers installed.
8. The DWR's threatened violation of the conditions of its permits requiring the DWR to meet the 0.7 EC objective between April and August, as required by revised Decision 1641, is subject to issuance of a Cease and Desist Order in accordance with California Water Code section 1831.

IT IS HEREBY ORDERED, that the DWR, in cooperation with the USBR, shall take the following corrective actions and satisfy the following time schedule:

1. The DWR shall ensure the SDIP permanent barriers are installed and operational, or equivalent measures are implemented, by January 1, 2009. Within 60 days of issuance of this CDO, the DWR shall submit to the Division Chief a detailed schedule, including planned completion dates for key events leading to completion of the permanent barriers by January 1, 2009. If the schedule provides for implementation of equivalent measures, the DWR shall submit information establishing that those measures are equivalent to the installation of permanent barriers. The schedule is subject to approval by the Executive Director of the State Water Board in regard to its completeness and inclusion of significant project milestones. The DWR shall submit any additional information or revisions to the schedule requested within the period specified by the Executive Director. The DWR shall implement the schedule as approved by the Executive Director.
2. In the event that the DWR projects a potential violation of the 0.7 EC objective for Interagency Stations C-6, C-8, and P-12, prior to construction of the permanent barriers or implementation of the approved equivalent measures, the DWR shall timely inform the State Water Board of the potential violation and describe the corrective actions being initiated to avoid the violation. Corrective actions may include additional releases from State Water Project (Project) facilities, reduction in exports, or purchases of water under transfers from other entities.
3. If a violation of the 0.7 EC objective for Interagency Stations C-6, C-8, and P-12 occurs, the DWR shall report to the State Water Board (1) the length of time over which the violation occurred, (2) the corrective actions taken to curtail the violation, and (3) the amount of water bypassed or released from Project supplies, the net reduction in exports, or measured quantity of other actions, if any, taken specifically to correct the violation. DWR shall also identify the amount of its Project supplies remaining for beneficial uses.
4. Every three months, commencing on the month following the date of this order, the DWR shall submit to the State Water Board a status report on the construction of each barrier and an updated projection of the permanent barrier project's final completion date and initial operational date.

Upon the failure of any person to comply with a CDO issued by the State Water Board pursuant to this chapter, the Attorney General, upon the request of the State Water Board, shall petition the superior court for the issuance of prohibitory or mandatory injunctive relief as appropriate, including a temporary restraining order, preliminary injunction, or permanent injunction. (Wat. Code, § 1845, subd. (a).) Any person or entity who violates a CDO may be liable for a sum not to exceed one thousand dollars (\$1,000) for each day in which the violation occurs. (Wat. Code, § 1845, subd. (b)(1).)

STATE WATER RESOURCES CONTROL BOARD

*Victoria A. Whitney, Chief
Division of Water Rights*

Dated:

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 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/water_laws/index.html.

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 the procedural requirements specified in this notice shall be filed in writing. 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 United States Bureau of Reclamation, the Department of Water Resources, the Division of Water Rights' Prosecutorial Team, and any other persons or entities authorized by the hearing officers to participate in the hearing as parties. 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 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 two copies of a Notice of Intent to Appear, which must be **received** by the State Water Board no later than **noon on Thursday, September 8, 2005**. 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.

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 the proposed testimony, and (4) an estimate of the time (not to exceed 20 minutes) that the witness will need to present a brief oral summary of the witness' testimony. The witness' 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 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 Exhibit Identification Indexes 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 hearing party who has submitted a Notice of Intent to Appear. Hearing participants who intend to make only policy statements are not required to exchange information and will not receive testimony or exhibits from the parties. The service list will indicate which participants agreed to accept electronic service. No later than **noon on Thursday, September 29, 2005**, each participant shall serve a copy of its Notice of Intent to Appear on each of the participants identified on the service list and shall also serve on the State Water Board and the participants 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 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.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 State Water Board either: nine paper copies of each of its exhibits or five 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.

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.

With its exhibits, each participant must submit to the State Water Board and serve on the other participants a completed Exhibit Identification Index. If possible, each participant should submit to the State Water Board and serve on the other participants an electronic copy, as well as a paper copy of the Exhibit Identification Index. Please see Section 5 for details regarding electronic submissions.

A statement of service with manner of service indicated shall be filed with each participant's exhibits. The exhibits and indexes for this hearing, and a statement of service, must be **received** by the State Water Board by **noon on Thursday, September 29, 2005**, and served on the other participants on or before that date.

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 2000 software.
 - 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 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 must be in a version supported by Microsoft Excel 2000 (preferred) or Word 2000. Electronic submittals to the State Water Board of documents less than 5 megabytes in size may be sent via electronic mail to: WrHearing@waterboards.ca.gov with a subject of “Delta Salinity Draft CDOs Hearing”. Electronic submittals to the State Water Board of documents greater than 5 megabytes in 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 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 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>.

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.
 - a. **Policy Statements:** Pursuant to California Code of Regulations, title 23, section 648.1, subdivision (d), the State Water Board 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 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 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 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 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, 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

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.

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, a hearing officer may allow oral arguments or set a schedule for filing briefs or closing statements. If a hearing officer authorizes the participants to file briefs, four 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.
 - 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.
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 any of the other participants regarding substantive 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 the State Water Board staff attorney on the hearing team, not State Water Board members. (Gov. Code, § 11430.20, subd. (b).) A memorandum regarding *ex parte* communications is available upon request or from our website at http://www.waterboards.ca.gov/water_laws/index.html
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 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
P.O. Box 2000, Sacramento, CA 95812-2000
Attn: Jean McCue
Phone: (916) 341-5351
Fax: (916) 341-5400
Email: WrHearing@waterboards.ca.gov
With Subject of “Delta Salinity Draft CDOs Hearing”

NOTICE OF INTENT TO APPEAR

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

Delta Salinity Draft CDOs, Sacramento and San Joaquin Rivers and Delta
 Scheduled for
October 24, 2005

- 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: _____

