



State Water Resources Control Board



Winston H. Hickox

Secretary for

Environmental Protection *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 Web-site at <http://www.swrcb.ca.gov>.*

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Mailing Address: P.O. Box 2000 • Sacramento, California • 95812-2000
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Gray Davis

Governor

NOTICE OF PRE-HEARING CONFERENCE AND PUBLIC HEARING

**The State Water Resources Control Board will hold a
Pre-Hearing Conference and Public Hearing on Petitions to Change
Water Right Licenses 2685, 6047, and 11395
(Applications 1224, 10572, and 16186, respectively) of
Merced Irrigation District (Merced River in Mariposa and Merced Counties)**

A Pre-Hearing Status Conference will commence on

**Tuesday, November 5, 2002 -- 3:30 pm
The Joe Serna, Jr. Cal/EPA Building
Sierra Hearing Room, Second Floor
1001 I Street, Sacramento**

The Hearing will commence on

**Tuesday, December 3, 2002 -- 9:00 a.m.
The Joe Serna, Jr. Cal/EPA Building
Room 230 – Second Floor
1001 I Street, Sacramento**

SUBJECT OF HEARING

The purpose of this hearing is to receive evidence that will assist the State Water Resources Control Board (SWRCB) in determining whether to approve, subject to any terms and conditions, Merced Irrigation District's (MID) petitions to change Licenses 2685, 6047, and 11395 to add E1 Nido Irrigation District (ENID) to MID's place of use and to add a point of diversion.

SUBJECT OF PRE-HEARING CONFERENCE

The hearing officer will conduct a pre-hearing conference. Parties who wish to submit evidence at the hearing are required to attend the pre-hearing conference. The SWRCB will conclude that parties who fail to appear at the pre-hearing conference no longer wish to participate in the hearing. The purpose of the pre-hearing conference is to discuss procedural matters related to

the hearing and to receive an update on continuing negotiations among the parties aiming at protest resolution and withdrawal.

BACKGROUND

On March 18, 1992, MID filed petitions to add the service area of ENID to MID's place of use under Licenses 2685, 6047, and 11395. ENID's service area consists of approximately 9,400 acres.

The petitioner also requests the addition of a point of rediversion on Duck Slough to each of Licenses 2685, 6047 and 11395. The proposed point of rediversion on Duck Slough (described in licensed Applications 8238 and 18774) is located within the SW¹/₄ of NW¹/₄ of Section 11, T8S, R14E, MDB&M. In 1994, at the request of MID, the SWRCB postponed a scheduled hearing to allow MID and the California Department of Fish and Game (DFG) additional time to conclude protest negotiations over public trust issues.

PROPOSED CHANGES

MID diverts water from the Merced River to storage at Lake McClure and Lake McSwain. Water is rediverted from the Merced River at a point below Lake McSwain through a series of canals into Duck Slough, and from Duck Slough across MID's southern boundary through the El Nido canal to ENID (see enclosed map). Although MID allegedly has delivered water to ENID since the 1930's, ENID's service area is not included in MID's place of use under Licenses 2685, 6047, and 11395. MID states that it has been able to supply water to ENID in all but extremely dry years.

Licenses 2685, 6047, and 11395 comprise MID's consumptive, post-1914 appropriative water rights. License 2685 was issued on August 11, 1944, for direct diversion of 1,500 cubic feet per second (cfs) of water and 266,400 acre-feet per annum (afa) of storage; License 6047 was issued on July 11, 1960, for direct diversion of 257 cfs of water; and License 11395 was issued on August 15, 1983 for 605,000 afa of storage. The total maximum withdrawal from Lakes McClure and McSwain is limited to 516,110 afa.

MID and ENID are now pursuing consolidation of their districts, with MID being the surviving entity. The petitioner states that the consolidation will involve no new facilities or operational changes.

MID will annex ENID, and ENID's three water right licenses will be assigned to MID. ENID diverts water from Duck Slough through the El Nido canal for underground storage under Licenses 6032 and 9429 (Applications 8238 and 18774). ENID also diverts 3.8 cfs from November 1 to April 15 from Deadman Creek for domestic and irrigation purposes under License 5227 (Application 6807).

ENVIRONMENTAL DOCUMENTATION

In 1993, MID and ENID as Co-Lead Agencies for the project under the California Environmental Quality Act (CEQA) prepared and circulated for public review a Draft Negative Declaration and supporting Initial Study covering the proposed consolidation of the two districts.

The Draft Negative Declaration/Initial Study was circulated through the State Clearinghouse (SCH) for public review on September 21, 1993, under SCH Identification Number 1993092077.

Subsequently, a Notice of Determination covering the proposed consolidation of the two districts was filed with the State Clearinghouse on October 26, 2001 under SCH Identification Number 1993105682.

Due to the considerable time lapse since 1993 and the culmination of protest negotiations amongst the parties, a new Draft Initial Study and Negative Declaration covering the proposed consolidation with ENID was circulated through the State Clearinghouse for public review on November 30, 2001 under SCH Identification Number 201111180. The new Draft Initial Study incorporated two agreements amongst the parties in the form of a Memorandum of Understanding (MOU) and a Merced River Adaptive Management Plan (MRAMP). A Notice of Determination covering the proposed consolidation of the two districts and the MOU and MRAMP agreements was filed with the State Clearinghouse on May 6, 2002 under SCH Identification Number 201111180.

PROTESTS

MID's petitions for change were protested by the Delta Water Users Association, South Delta Water Agency, Lafayette Ranch, DFG, the California Sportfishing Protection Alliance (CSPA), and the National Marine Fisheries Service (NMFS). The Delta Water Users Association's protest, which was based on injury to riparian and appropriative rights, was submitted on behalf of four of its members: Lafayette Ranch, Alexander Hildebrand, I. N. Robinson, Jr., and Edwin E. Hageman. DFG, CSPA, and NMFS filed protests on environmental grounds. NMFS's protest was subsequently dismissed in 1994.

On November 30, 2001, MID circulated a new Draft Initial Study and Negative Declaration. In February 2002 the SWRCB informed the remaining protestants that the environment document was available and asked the protestants to submit to the SWRCB either: 1) a letter of protest withdrawal, if the environmental document provided the protestants with information necessary to resolve their protests or 2) a list of issues that the protestants believed to be unresolved. The Delta Water Users Association et al, South Delta Water Agency, Lafayette Ranch and CSPA did not respond, and their protests were consequently dismissed on July 9, 2002.

DFG remains the only protestant to MID's change petitions. DFG is concerned with the impact on fishery resources in the lower Merced River downstream from Lake McClure.

MID and DFG are negotiating protest resolution. On September 13, 2002, the SWRCB received the MRAMP Agreement and the MOU signed by representatives of MID, DFG, the U.S. Bureau of Reclamation, the U.S. Fish and Wildlife Service, and the California Department of Water Resources. The MOU includes a protest dismissal clause under which DFG agrees to conditionally dismiss its protest pertaining to the MID-ENID consolidation, provided any order issued pursuant to the consolidation petition:

" (1) incorporates an acceptable extract of this MOU as a condition of the license or permit; (2) provides for continuing jurisdiction of the Board to review the implementation of this MOU; and (3) requires review of the license or permit terms in the year 2010 or when the interim spring flows terminate, whichever is earlier."

The parties are continuing to develop the proposed permit term.

KEY HEARING ISSUES

The decision of the SWRCB whether to approve MID's petitions to change Licenses 2685, 6047, and 11395 must be based upon the evidentiary record developed at the hearing. The petitioner, protestant, and interested parties should submit exhibits and testimony responsive to the following issues to be considered at the hearing:

- 1. Will approval of the petitioned changes to MID's Licenses 2685, 6047 and 11395 result in injury to any legal user of the water involved?** The petitioner initially is responsible for showing that the proposed changes will not injure any legal user of the water involved. If the petitioner makes such a showing, any interested parties alleging injury to existing water rights must present evidence demonstrating the specific injury to their valid water rights that would result from approval of the proposed changes.
- 2. Will approval of the petitioned changes to MID's Licenses 2685, 6047 and 11395 increase the amount of water the petitioner is entitled to use, or otherwise initiate a new water right?** The petitioner is responsible for showing that there will be no increase in the amount of water that it is entitled to use under its licenses.

SWRCB Order 93-2, which concerned MID's petition to add a place of use to License 11395, requires MID to demonstrate consumptive water savings when filing any future petition for change of place of use under the license or before the SWRCB processes a petition already filed. Should Order 93-2 be construed to apply if MID filed a petition, prior to adoption of the Order, to add a place of use that allegedly has been historically served with quantities of water under its licenses?

What evidence is available to support a finding that MID has historically delivered water to ENID? Were the approved quantities of water in MID's licenses based in part on the historical diversions to ENID? Did MID include in its Reports of Permittee to the Division of Water Rights the quantities of water historically served to ENID? MID should present evidence regarding the operation for water delivered to ENID and provide historical monthly delivery data.

Are the proposed deliveries to ENID limited to those quantities historically served to ENID? If the proposed deliveries are not limited to the historic use, can MID identify sufficient water savings from its operations that would cover the proposed place of use without exceeding its water rights or injuring any legal user of water?

Does MID have any present commitments for future deliveries of water to other areas, and if so, what is the delivery amount, conveyance system, and date of planned delivery commencement?

If the SWRCB does not approve the petitioned changes, should the quantity of water under MID's licenses be reduced by the amount of water historically diverted to ENID?

- 3. Will approval of the petitioned changes to MID's Licenses 2685, 6047 and 11395 result in adverse environmental impacts or harm to public trust resources?** Have the quantities of water historically served to ENID caused, or will they cause in the future, significant degradation of water quality?

What is the status of fishery and other public trust resources (in particular, San Joaquin fall-run chinook salmon) in the lower Merced River and in the San Joaquin River downstream of the confluence with the Merced River?

Have fishery or other public trust resources in the lower Merced River and the San Joaquin River downstream of the confluence with the Merced River been adversely affected by in-stream flow conditions in the lower Merced River below the Main Canal intake since the 1930s? If so, to what extent is any injury to fishery or other public trust resources in the lower Merced River and the San Joaquin River downstream of the confluence with the Merced River attributable to the historic delivery of Merced River water to ENID? What minimum in-stream flows or other conditions are needed for the protection of fishery resources and other public trust resources in the lower Merced River? What additional studies, if any, are needed to further refine in-stream flows and other requirements for the protection of fishery and other public trust resources in the lower Merced River?

- 4. If the SWRCB approves the petitioned changes, what terms and conditions, if any, would be in the public interest?**
- 5. Will approval of the petitioned changes to MID's Licenses 2685, 6047 and 11395 result in a reasonable and beneficial use of water?**

PRE-HEARING CONFERENCE AND HEARING PARTICIPATION

Participation in the pre-hearing conference is mandatory. Only those persons who submit a Notice of Intent to Appear and who participate in the pre-hearing conference will be considered parties for the hearing.

Please refer to the enclosed copy of INFORMATION CONCERNING APPEARANCE AT WATER RIGHTS HEARINGS.

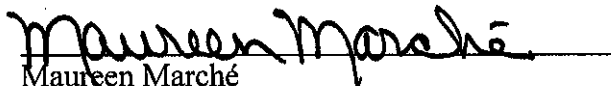
Parties who wish to participate in the MID/ENID Water Rights Hearing must file a Notice of Intent to Appear and six copies thereof no later than **4:00 p.m. on October 25, 2002.**

PARKING AND ACCESSIBILITY

Public parking is available in several public lots as designated on the enclosed map of parking locations. There is also parking available at metered spaces on area streets.

The CAL/EPA Headquarters Building second-floor Room 230 and Sierra Hearing room are accessible to persons with disabilities.

Questions concerning this notice may be directed to Kyriacos Kyriacou, Staff Engineer, at (916) 341-5347 or Samantha Olson, Staff Counsel, at (916) 327-8235 or faxed to Mr. Kyriacou at (916) 341-5400.


Maureen Marché
Clerk to the Board

Enclosures

Date: October 7, 2002

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 in California Code of Regulations, title 23, sections 648-649.6 and 760, as they currently exist or may be amended. A copy of the current regulations, and the underlying statutes, governing adjudicative proceedings before the State Water Resources Control Board (SWRCB) is available upon request or may be viewed at the SWRCB's web site:
http://www.swrcb.ca.gov/water_laws/

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

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 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 petitioners and persons or entities who have filed unresolved protests or objections, and any other 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.
3. **NOTICE OF INTENT TO APPEAR:** Participants in this hearing must file a Notice of Intent to Appear and two copies thereof which must be received by the SWRCB no later than **4:00 p.m. on Friday October 25, 2002**. Failure to submit a Notice of Intent to Appear and exhibits in a timely manner may be interpreted by the SWRCB as intent not to appear.

The Notice of Intent to Appear must state the name and address of the participant. If the participant is a party or desires to be recognized as a party, the participant must include the name of each witness who will testify on the participant's behalf; a brief description of the proposed testimony; and an estimate of the time, not to exceed 20 minutes, that the witness will take to present a brief oral summary of the witness's testimony. The witness's testimony must be submitted in writing as described in section 4 below. Participants should indicate how they intend to participate in the hearing by marking the appropriate box on the Notice of Intent to Appear. Participants who do not intend to

present a case in chief but who may wish to cross-examine witnesses or present rebuttal should so indicate on the Notice of Intent to Appear. Participants who decide not to present a case in chief after having submitted a Notice of Intent to Appear should notify the SWRCB and the other participants as soon as possible.

In order to expedite the exchange of information and lower the cost of participating in the hearing, the SWRCB encourages participants to submit written policy statements, written opening statements, written testimony, exhibits, and Exhibit Identification Indexes to the SWRCB in electronic form. In addition, participants may exchange the foregoing documents in electronic form. Hearing participants are not required to either submit these documents in electronic form or accept electronic service; however, those who choose to submit these documents electronically must comply with the requirements described in section 5, below. If you are willing to accept electronic media service in lieu of receiving hard copies of items, please check the appropriate box on the Notice of Intent to Appear.

Following receipt of the Notices of Intent to Appear, the SWRCB will mail to each participant who has submitted a notice a service list of participants. The service list will indicate which participants agreed to accept electronic service. No later than **Tuesday November 5, 2002**, each participant shall serve a copy of its Notice of Intent to Appear on each of the other participants identified on the service list. Each participant shall attach to each copy of its Notice of Intent to Appear a statement of service that indicates the manner of service. If there is any change in the hearing schedule, only those persons or entities who have filed a Notice of Intent to Appear will be informed of the change.

4. **WRITTEN TESTIMONY AND OTHER EXHIBITS:** Exhibits include written testimony, statements of qualifications of expert witnesses, and other documents to be used as evidence. Each participant proposing to present testimony on factual or other evidentiary matters at the hearing shall submit such testimony in writing.¹ Written testimony shall be designated as an exhibit, and must be submitted with the other exhibits. Oral testimony that goes beyond the scope of the written testimony may be excluded. A participant who proposes to offer expert testimony must submit an exhibit containing a statement of the expert witness's qualifications.

Each participant shall submit to the SWRCB either: (1) six paper copies of each of its exhibits or (2) three paper copies and one electronic copy of each of its exhibits. Each participant shall also serve a copy of each exhibit on every participant on the service list. Participants may serve those parties who agree to electronic service with an electronic copy of exhibits. Participants must serve paper copies of exhibits on those participants who do not agree to electronic service.

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

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.

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 SWRCB by **4:00 p.m. on Friday November 15, 2002** 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 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 may be excluded unless the unpublished technical documents are admitted as exhibits.
5. **ELECTRONIC SUBMISSIONS:** Participants are encouraged to submit the following documents to the SWRCB in electronic form: written opening statements, written policy statements, written testimony, exhibits, and Exhibit Identification Indexes. In addition, the foregoing documents may be served electronically on those participants who have agreed to accept electronic service. Paper copies of all other documents must be submitted to the SWRCB and served on the other parties, unless the hearing officer specifies otherwise.

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

Participants who agree to electronic service may request that specific documents be provided to them in paper copy. Requests should be made to the participant who submitted the document, not to the SWRCB. Participants who receive such a request shall provide a paper copy of the requested document within five days of the date the request is received. The SWRCB will post a list of all exhibits submitted for the hearing on its website at <http://www.waterrights.ca.gov/hearings>.

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

emphasize their written testimony on direct examination.² Each participant will be allowed up to two hours total to present all of its direct testimony.³

- iii. **Cross Examination:** Cross examination of a witness will be permitted on the party's written submittals, the witness' oral testimony, and other relevant matters. If a participant presents multiple witnesses, the hearing officer will decide whether the participant's witnesses will be cross examined as a panel. Cross examiners initially will be limited to one hour per witness or panel of witnesses. The hearing officer has discretion to allow additional time for cross examination if there is good cause demonstrated in an offer of proof. Any redirect examination and recross examination permitted by the hearing officer will be limited to the scope of the cross examination and the redirect examination, respectively. Witnesses may be cross examined on relevant subjects that are not covered in the direct testimony. (Gov. Code, § 11513, subd. (b).) Ordinarily, only a participant or the participant's representative will be permitted to examine a witness, but the hearing officer may allow a participant to designate a person technically qualified in the subject being considered to examine a witness. SWRCB members and the SWRCB's counsel may ask questions at any time, and the SWRCB members and staff may cross examine any witness.
- c. **Rebuttal:** After all participants have presented their cases in chief and their witnesses have been cross-examined, the hearing officer will allow participants to present rebuttal evidence. Rebuttal evidence is new evidence used to rebut evidence presented in another participant's case in chief. Rebuttal testimony and exhibits need not be submitted prior to the hearing. Rebuttal evidence is limited to evidence that is responsive to evidence presented in a case in chief, and it does not include evidence that should have been presented during the presenter's case in chief. It also does not include repetitive evidence. Cross-examination of rebuttal evidence will be limited to the scope of the rebuttal evidence.
- d. **Closing Statements and Legal Arguments:** At the close of the hearing or at other times if appropriate, the hearing officer may allow oral arguments or set a schedule for filing briefs or closing statements. If the hearing officer authorizes the participants to file briefs, six copies of each brief shall be submitted to the SWRCB, and one copy shall be served on each of the other participants on the service list. A participant shall not attach a document of an evidentiary nature to a brief unless the document is at the time in the evidentiary hearing record or is the subject of an offer of the document in evidence. Every participant filing a brief shall file a statement of service with the brief, indicating the manner of service.
- e. **Large Format Exhibits:** Participants submitting large format exhibits such as maps, charts, and other graphics shall provide the original for the hearing record in a form that can be folded to 8 ½ x 11 inches. Alternatively, participants may supply, for the hearing record, a reduced copy of a large format original if it is readable.

7. **EX PARTE CONTACTS:** During the pendency of this proceeding, commencing no later than the issuance of the Notice of Hearing, there will be no *ex parte*

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.

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:** Notices of Intent to Appear, written testimony and other exhibits submitted to the SWRCB should be addressed as follows:

Division of Water Rights
State Water Resources Control Board
P.O. Box 2000
Sacramento, CA 95812-2000
Attn: Kyriacos Kyriacou
Phone: (916) 341-5347
Fax: (916) 341-5400
Email: WrHearing@waterrights.swrcb.ca.gov
Subject: MID-ENID Petition

Exhibit Identification Index

Participant _____

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

NOTICE OF INTENT TO APPEAR

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

APPLICATIONS 1224, 10572 AND 16186
 FILED BY
 MERCED RIGATION DISTRICT

Scheduled to commence
December 11, 2002

- I will be only be making a policy statement.
- I/we will participate through cross-examination or rebuttal only.
- I agree to accept electronic service.
- 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.)

Dated: _____ Signature: _____

Name:	Fax Number:
Mailing Address:	Phone Number:
	E-mail Address:

Staff Exhibits to be Offered into Evidence

The following public documents on file with the SWRCB contain information that are relevant to the matters to be heard. SWRCB staff will offer these documents in evidence at the hearing by reference.

1. Files of Licensed Applications 1224, 10572, and 16186.
2. SWRCB Order WR 89-8
3. SWRCB Order WR 93-2
4. SWRCB Decision D-1485
5. SWRCB Decision D-1594
6. Draft Negative Declaration/Initial Study prepared by Merced Irrigation District and El Nido Irrigation District covering the proposed consolidation of the two districts, SCH Identification No. 199309277, dated September 1993.
7. Draft Negative Declaration/Initial Study prepared by URS Corporation for Merced Irrigation District, SCH Identification No. 201111180, dated November 2001.
8. Department of Water Resources Bulletin No. 230, "Index to Sources of Hydrologic Data" and all pertinent data available for the Merced and San Joaquin rivers from the Water Data Information System and Bulletins No. 130 and 23.
9. Topographic maps published by the United States Geological Survey covering the points of diversion and rediversion and place of use for the petitioner and the reaches of the San Joaquin River and its tributaries between the petitioner's points of diversion and rediversion and place of use.
10. United States Department of Commerce, National Oceanic and Atmospheric Administration, "Climatological Data for California" for the Merced River for the period of published record.
11. United States Department of the Interior, Geological Survey, "Water Resources Data: California, Volume 3. Southern Central Valley Basins and the Great Basin from Walker River to Truckee River", for the Merced and San Joaquin rivers for the period of published record.
12. Davis, G. H., Green, J. H. Olmsted, F. H. and Brown, D. W., 1959, Ground-Water Conditions and Storage Capacity in the San Joaquin Valley, California: U. S. Geological Survey Water-Supply Paper 1469.