



Winston H. Hickox
Secretary for
Environmental
Protection

State Water Resources Control Board

Division of Water Rights

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

NOTICE OF PUBLIC HEARING & PRE-HEARING CONFERENCE

**The State Water Resources Control Board will hold a Hearing
to Determine Whether to Impose Administrative Civil Liability
Against**

**Lloyd L. Phelps, Jr. (Complaint No. 262.5 – 28), Joey P. Ratto, Jr. (Complaint No. 262.5 –
29), and Ronald D. Conn and Ron Silva, et al. (Complaint No. 262.5 – 30)**

San Francisco Bay/Sacramento – San Joaquin Delta Estuary

**A pre-hearing status conference will commence
On Wednesday, December 4, 2002 at 1:00 p.m.**

at

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

**The hearing will commence at 10:00 a.m. on Tuesday, January 14, 2003 and continuing, if
necessary, at 9:00 a.m. on January 15 and 16, 2003**

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 (SWRCB) to receive evidence relevant to determining whether it should affirm Administrative Civil Liability Complaints Nos. 262.5-28, 262.5-29 and 262.5-30 issued by the Chief of the Division of Water Rights to Lloyd L. Phelps, Jr. (Licenses 13444 and 13274), Joey P. Ratto Jr. (License 13194), and Ronald D. Conn and Ron Silva, et al (License 13315), respectively.

BACKGROUND

License No.	Licensee	Source	Direct Diversion Rate	Max Amount	Season
13444	Lloyd L. Phelps Jr.	San Joaquin River	1.43 cfs	335 afa	1/1 – 10/31
13274	Lloyd L. Phelps Jr.	San Joaquin River	3.16 cfs	534 afa	3/1 – 10/31
13194	Joey P. Ratto Jr.	Middle River	0.59 cfs	61.5 afa	4/1 – 11/1
13315	Ronald D. Conn and Ron Silva, et al	Middle River	3.9 cfs	604 afa	3/1 – 12/1

Each of these licenses contains Standard Term 91, which prohibits diversion of water under the license when the Central Valley Project or the State Water Project is required to release stored or foreign water to satisfy inbasin entitlements, including water quality objectives in the Delta.

Water Code section 1055, subdivision (a), authorizes the Executive Director of the SWRCB to issue a complaint to any person on whom administrative civil liability may be imposed under section 1052. On May 17, 1999, the Executive Director of the SWRCB delegated this authority to the Chief of the Division of Water Rights (Division).

On July 2, 2002, the Division Chief issued Administrative Civil Liability complaints against Lloyd L. Phelps, Jr. (Complaint No. 262.5 – 28), Joey P. Ratto, Jr. (Complaint No. 262.5 – 29), and Ronald D. Conn and Ron Silva, et al. (Complaint No. 262.5 – 30). Each of the complaints alleges that the licensee diverted water during periods when they had been notified to curtail their water diversions because no water was available under their respective licenses. The diversion or use of water without a water right is a trespass against the State. (See Wat. Code § 1052(a).) The complaints propose imposition of Administrative Civil Liabilities of \$3,750 on Mr. Ratto, of \$14,250 on Mr. Conn and Mr. Silva et al., and of \$22,500 on Mr. Phelps. The complaints include in substance the following allegations:

1. By letters dated June 28, 2000, the Division notified each of the licensees to curtail their water diversions for the year 2000 commencing on June 28, 2000, pursuant to Term 91. Division staff inspected the projects on August 15, 2000, and found that the licensees had irrigated even after receiving the June 28 notices of curtailment under Term 91. Each of the licensees claimed a riparian right to cover the diversion of water during the curtailment period, based on the premise that their properties are located within the Delta lowlands.
2. By letters dated August 23, 2000, the Division asked each of the licensees to submit proof of an alternate water supply or other evidence supporting their riparian claims. On behalf of the licensees, the South Delta Water Agency (SDWA) asked for additional time for research. The Division granted the additional time by letter dated December 1, 2000, and granted a second time extension on April 3, 2001. On May 21, 2001, the attorney for SDWA submitted its response on behalf of SDWA and the licensees. The Division replied to SDWA on January 31, 2002, with copies to each of the licensees, explaining that the evidence and legal argument submitted by the SDWA was inadequate to establish the existence of an alternate water source.

3. The Division notified each of the licensees, by letter dated June 4, 2001, of the Term 91 curtailment of water diversion for the year 2001, commencing on June 4, 2001. On August 14, 2001, the Division inspected the properties served by the above referenced licenses and found that the licensees once again had planted and irrigated within the place of use of their licenses.

By letter dated July 22, 2002, the licensees, through their attorney, all submitted a request for a hearing.

KEY ISSUES

- 1.) **Should the SWRCB order liability in response to Administrative Civil Liability Complaint No. 262.5-28 against Lloyd L. Phelps, Jr. (Licenses 13444 and 13274)?**
Did the licensee divert water during the periods when Term 91 makes water unavailable under the conditions of the license? Does the licensee have any basis of right to divert water during the curtailment periods? Is the proposed administrative civil liability amount appropriate?
- 2.) **Should the SWRCB order liability in response to Administrative Civil Liability Complaint No. 262.5-29 against Joey P. Ratto Jr. (License 13194)?**
Did the licensee divert water during the periods when Term 91 makes water unavailable under the conditions of the license? Does the licensee have any basis of right to divert water during the curtailment periods? Is the proposed administrative civil liability amount appropriate?
- 3.) **Should the SWRCB order liability in response to Administrative Civil Liability Complaint No. 262.5-30 against Ronald D. Conn and Ron Silva, et al (License 13315)?**
Did the licensee divert water during the periods when Term 91 makes water unavailable under the conditions of the license? Does the licensee have any basis of right to divert water during the curtailment periods? Is the proposed administrative civil liability amount appropriate?

PRE-HEARING CONFERENCE

The hearing officer will conduct a pre-hearing status conference to discuss the scope of the hearing and any appropriate procedural issues on Wednesday, December 4, 2002 at 10 a.m. The goal of the pre-hearing conference is to ensure that the hearing proceeds in an orderly and expeditious manner. There will be no discussion during the pre-hearing conference of the merits of the specific issues raised in the petition. Following the pre-hearing conference, the SWRCB may in its discretion modify this notice in whole or in part. All parties intending to participate in the hearing are encouraged to attend the pre-hearing conference.

ABOUT THIS HEARING

In this hearing, the Division of Water Rights will be represented by an enforcement team who will be a party in the hearing. The enforcement team members will be Aaron Miller, Nick Wilcox, John O'Hagan, and Samantha Olson. The enforcement 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 will consist of the hearing officer and the hearing staff. The hearing staff will assist the hearing officer and the other members of the SWRCB in 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 SWRCB on or before 12:00 p.m. on Monday, **December 2, 2002**.

To facilitate exchange of testimony, exhibits and witness qualifications, on or about **December 6, 2002**, the SWRCB will mail out a list of those parties who have indicated that they intend to participate in the hearing.

Copies of witnesses' proposed testimony, exhibits, list of exhibits, and qualifications must be served upon and received by the SWRCB and each of the parties who have indicated their intent to appear no later than 12:00 p.m. on Friday, **December 20, 2002**.

PARKING AND ACCESSIBILITY

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

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

IF YOU HAVE ANY QUESTIONS

SWRCB Chairman, Art Baggett will be the hearing officer presiding over this proceeding. SWRCB staff hearing team members will be Barbara Leidigh, Staff Counsel IV and Ruben Mora, Water Resource Control Engineer. *Ex parte* communications with members of the Board or SWRCB staff on the hearing team regarding substantive or controversial procedural matters involved in the hearing are prohibited during the pendency of this proceeding. (Gov. Code, §§ 11430.10-11430.80.) Communications regarding routine non-controversial procedural matters (See Gov. Code, § 11430.20, subd. (b).) should be directed to Barbara Leidigh, at (916) 341-5190.


Maureen Marché
Clerk to the Board

Enclosures

Date: November 7, 2002

John Herrick
South Delta Water Agency
P.O. Box 70392
Stockton, CA 95267

Lloyd L. Phelps and
Thelma Phelps Family Trust
c/o Lloyd L. Phelps, Jr.
3501 West Undine Road
Stockton, CA 95206-9695

Joey P. Ratto Jr. and
Linda A. Ratto
12000 Crocker Road
Stockton, CA 95206

Samantha Olson
Office of the Chief Counsel
State Water Resources Control Board
1001 I Street, 22nd Floor
P. O. Box 100
Sacramento, CA 95812

Ronald D. Conn, Patricia A. Conn, John
E. Conn, Mark W. Conn, Bill J. Conn
and Cathleen Conn
c/o Ronald D. Conn
10655 N. Alpine Road
Stockton, CA 95212

Ron Silva
21365 Mission Blvd.
Hayward, CA 94541

Dante J. Nomellini
Nomellini, Grilli & McDaniel
P.O. Box 1461
Stockton, CA 95201-1461

B-4
California Environmental
Protection Agency
c/o Winston H. Hickox
Secretary for Env. Prot.
1001 I Street, 25th Floor
Sacramento, CA 95814

California Farm Bureau Fed.
c/o William Dubois
Natural Resources Consultant
11th & L Building, Room 626
Sacramento, CA 95814

The Associated Press
1215 K Street, Suite 960
Sacramento, CA 95814

Yuba-Sutter Appeal Democrat
P.O. Box 431
Marysville, CA 95901

Stetson Engineering
c/o Ali Shahrwody
2171 E. Francisco Blvd, Ste K
San Rafael, CA 94901

Nino J. Mascolo
Southern California
Edison Company
2244 Walnut Grove Avenue
Rosemead, CA 91770

Bartkiewicz, Kronick
& Shanahan
c/o Alan B. Lilly
1011 Twenty-Second Street
Sacramento, CA 95816-4907

Calif. Fisheries Restoration Foundation
c/o Martin Seldon
1146 Pulora Court
Sunnyvale, CA 94087-2331

Bob Baiocchi, Consultant
P.O. Box 1790
Graeagle, CA 96103

Flycasters, Inc.
Mondy Lariz
2353 Venndale Ave
San Jose, CA 95124-4930

U.S. Bureau of Reclamation
MP-440
2800 Cottage Way
Sacramento, CA 95825

Mr. Larry Week, Chief
Native Anadromous Fish and Watershed
Branch
California Department of Fish & Game
1416 9th Street, 12th Floor
Sacramento, CA 95814

U.S. Fish & Wildlife Service
Ecological Division
2800 Cottage Way, Room E1803
Sacramento, CA 95825

Sierra Club
c/o Mr. Bob Rutemoeller
P.O. Box 587
Gualala, CA 95445-0587

Ms. Nancee Murray, Staff Counsel
California Department of Fish & Game
Legal Office
1416 9th Street, 12th Floor
Sacramento, CA 95814

City of Los Angeles
c/o Mr. Eric P. Bock, P.E.
Department of Water & Power
Los Angeles Aqueduct Division
111 North Hope Street, Rm 1469
Los Angeles, CA 90012

Pechanga Indian Reservation
c/o Mr. Vincent B. Ibanez
P.O. Box 181
Temecula, CA 92390

City Attorney's Office
214 Van Ness Avenue
San Francisco, Ca 94102

Mr. John A. Hecht, P.E., President
West Coast Environmental and Engineering
4253 Transport Street, Suite A
Ventura, CA 93003

U.S. Fish & Wildlife Services
Ventura Fish & Wildlife Office
2493 Portola Road, Suite B
Ventura, CA 93003

G-4
Dept. of Boating & Waterways
c/o Mr. Mike Ammon
2000 Evergreen Street, Suite 100
Sacramento, CA 95815-3888

Cary F. Wright
242 East J Street
Chula Vista, CA 91910

California Sportfishing Protection Alliance
c/o Jim Crenshaw, President
1248 East Oak Avenue
Woodland, CA 95695

Esther Schwartz
Capital Reporters
2340 Harvard Street
Sacramento, CA 95815

Myrllys L. Stockdale
Public Information Officer
State Water Resources Control Board
1001 I Street
Sacramento, CA 95814

Mr. Robert W. Floerke, Reg. Mgr.
California Dept. of Fish and Game
Central Coast Region 3
P.O. Box 47
Yountville, CA 94599

Cathy Crothers
California Dept. of Water
Resources
P.O. Box 942836
Sacramento, CA 94236-0001

Alf Brandt
U.S. Dept of Interior Office of the Solicitor
2800 Cottage Way, Rm E1712
Sacramento, CA 95825-1890

Sandra Dunn
Somach, Simmons and Dunn
Hall of Justice Building
813 Sixth Street, Third Floor
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Northern California Water
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1011 22nd St., Suite 100
Sacramento, CA 95816-4994

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Soares & Sexton
P.O. Box 1679
Oroville, CA 95965-1679

Nancee M. Murray
Dept. of Fish and Game Legal Affairs Div.
P.O. Box 944209
Sacramento, CA 94244-2090

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Downey, Brand, Seymour & Rohwer LLP
555 Capitol Mall, 10th Floor
Sacramento, CA 95814

Cliff W. Schulz
Kronick, Moskovitz, Tiedemann, &
Girard
400 Capitol Mall, 27th Floor
Sacramento, CA 95814

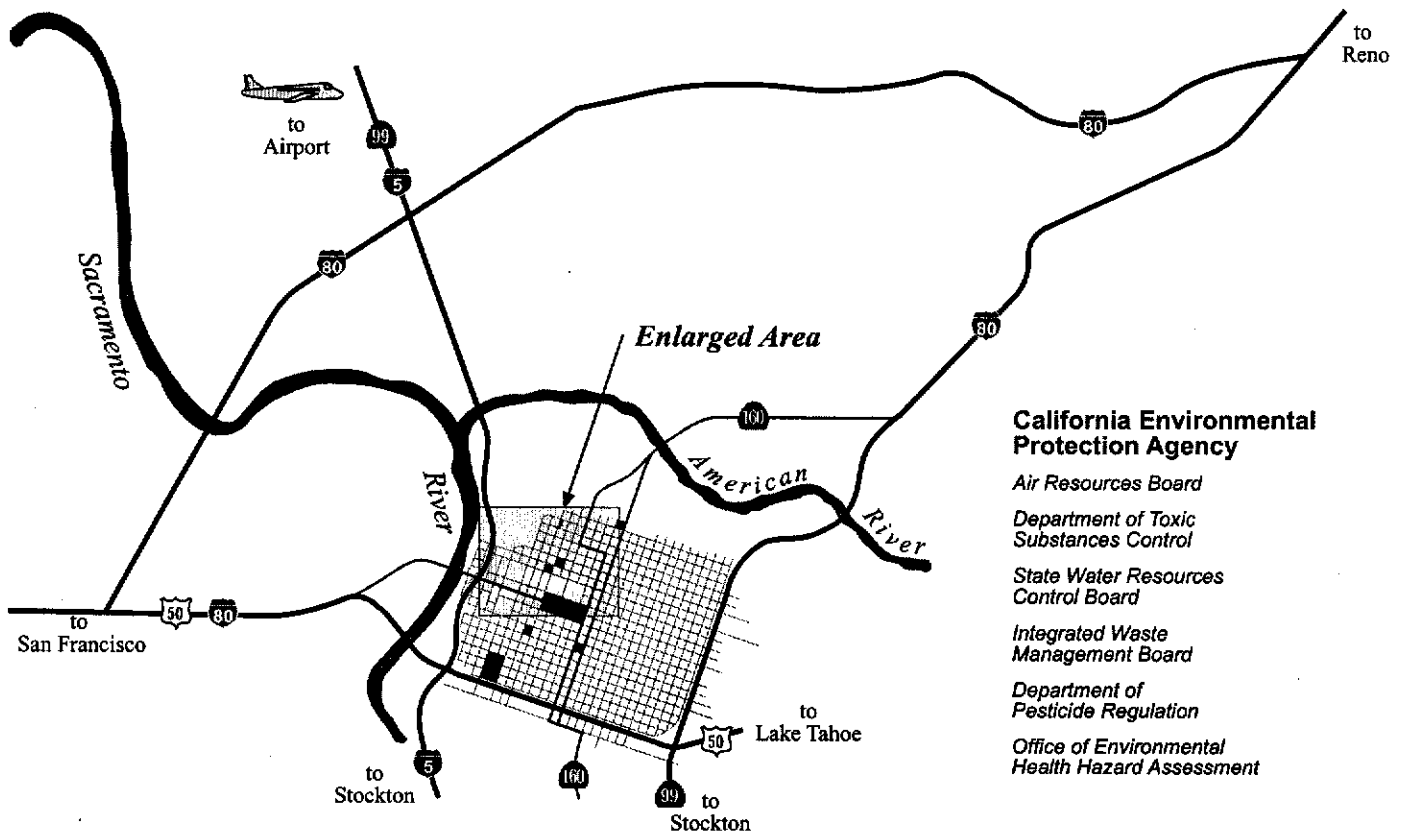
Daniel J. O'Hanlon
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Tim O'Laughlin
O'Laughlin & Paris, LLP
2571 California Park Dr., #210
Chico, CA 95928

Gregory Wilkinson
Best, Best & Kreiger LLP
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Riverside, CA 92502

Jeanne M. Zolezzi
Herum, Crabtree, Dyer, Zolezzi, & Terpstra
2291 W. March Lane, S. B100
Stockton, CA 95207

John Renning
USBR
2800 Cottage Way
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California Environmental Protection Agency

Air Resources Board

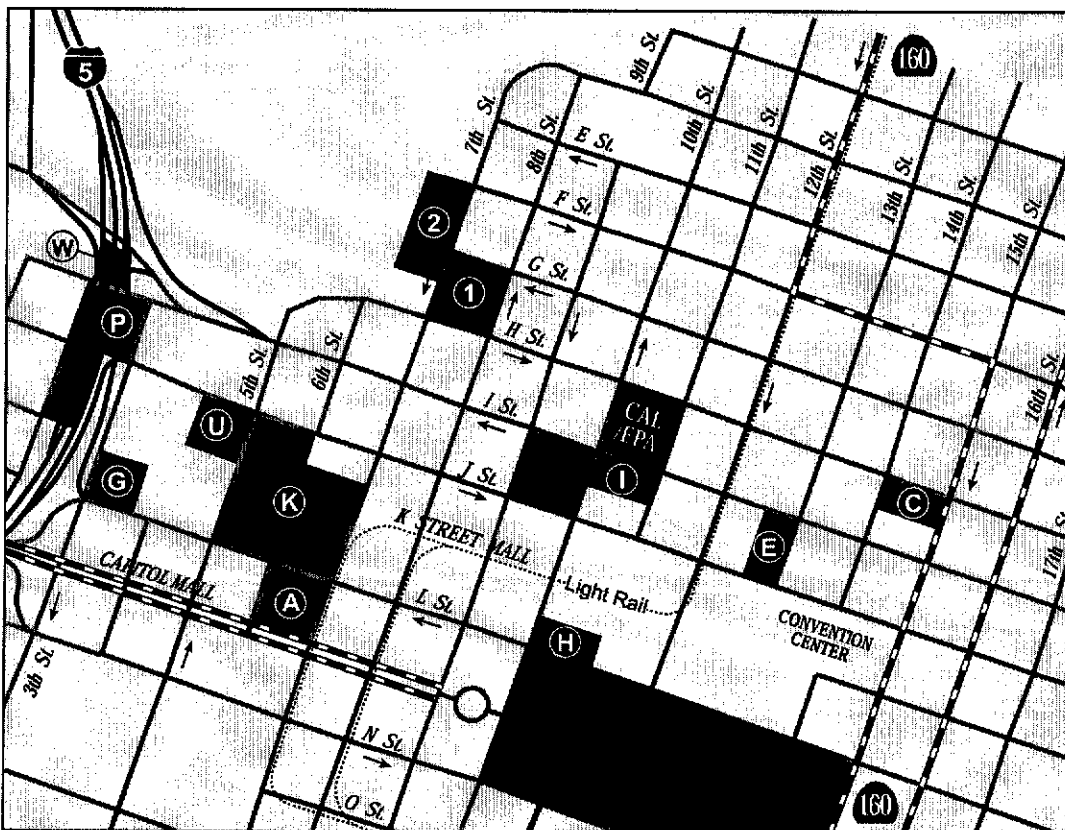
Department of Toxic Substances Control

State Water Resources Control Board

Integrated Waste Management Board

Department of Pesticide Regulation

Office of Environmental Health Hazard Assessment



Lot 1 (7th & G St.)
\$0.75 ea. 1/2 hr.

Lot 2 (7th & G St.)
\$0.75 ea. 1/2 hr.

Lot A (7th & Capitol)
\$0.75 ea. 1/2 hr. for first 2 hrs.
\$1.50 ea. additional hr.
\$8.00 maximum charge

Lot C (14th & H St.)
\$5.00 flat rate

Lot G (3rd & L)
\$0.75 ea. 1/2 hr. for first 2 hrs.
\$1.25 ea. additional 1/2 hr.
\$13.00 daily maximum charge

Lot H (10th & L)
\$1.25 each 1/2 hr.
\$15.00 daily maximum charge

Lot I (10th & I, 11th & I)
\$1.00 each 1/2 hr.
\$12.00 daily maximum charge

Lot K (6th & J/L, 7th & K)
\$0.75 ea. 1/2 hr. for first 2 hrs.
\$1.25 ea. additional 1/2 hr.
\$13.00 daily maximum charge

Lot P (2nd & I)
\$0.75 ea. 1/2 hr. for first 3 hrs.
\$1.00 each additional 1/2 hr.
\$12.00 daily maximum charge

Lot U (5th & J)
\$0.50 ea. 1/2 hr. for first 2 hrs.
\$1.00 ea. additional 1/2 hr.
\$12.00 maximum charge

Lot W (2nd & I St.)
\$5.00 flat rate

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, 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 Division of Water Rights, the water right holders whose exercise of their water rights may be modified as a result of this hearing, and persons or entities who have filed an unresolved written complaint with the SWRCB concerning the subject matter of the hearing. 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 **12:00 p.m. on Monday, December 2, 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; and if the participant is a party or desires to be recognized as a party, the name of each witness who will testify on the participant's behalf; a brief description of the proposed testimony; and an estimate of the time, not to exceed 20 minutes, that the witness will

take to present a brief oral summary of the witness's testimony. The witness's testimony must be submitted in writing as described in section 4 below. Participants should indicate how they intend to participate in the hearing by marking the appropriate box on the Notice of Intent to Appear. Participants who do not intend to present a case in chief but who may wish to cross-examine witnesses or present rebuttal should so indicate on the Notice of Intent to Appear. Participants who decide not to present a case in chief after having submitted a Notice of Intent to Appear should notify the SWRCB and the other participants as soon as possible.

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

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 Friday, **December 13, 2002**, 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 SWRCB 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 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) **seven** paper copies of each of its exhibits or (2) two paper copies and one electronic copy of each of its exhibits. Each participant shall also serve a copy of each exhibit on every participant on the service list. Participants may serve those parties who agree to electronic service with an electronic

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.

copy of exhibits. Participants must serve paper copies of exhibits on those participants who do not agree to electronic service.

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

A statement of service with manner of service indicated shall be filed with each participant's exhibits. The exhibits and indexes for this hearing, and a statement of service, must be received by the SWRCB by 12:00 p.m. on Friday, December 20, 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 will be excluded unless the unpublished technical documents are admitted as exhibits.
5. **ELECTRONIC SUBMISSIONS:** Participants are encouraged to submit the following documents to the SWRCB in electronic form: written opening statements, written policy statements, written testimony, exhibits, and Exhibit Identification Indexes. In addition, the foregoing documents may be served electronically on those participants who have agreed to accept electronic service. Paper copies of all other documents must

be submitted to the SWRCB and served on the other parties, unless the hearing officer specifies otherwise.

Any documents submitted or served electronically must be in Adobe™ Portable Document Format (PDF), except for Exhibit Identification Indexes, which must be in a version supported by Microsoft Excel 97 (preferred) or Word 97. Electronic submittals to the SWRCB of documents less than 5 megabytes in size may be sent via electronic mail to: WrHearing@waterrights.swrcb.ca.gov with subject of "SDWA ACL". 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. The time limits specified below may be changed by the Hearing Officer, at his discretion, as a result of the Pre-Hearing Conference.
 - a. **Policy Statements:** Pursuant to California Code of Regulations, title 23, section 648.1, subdivision (c), the SWRCB will provide an opportunity for presentation of nonevidentiary policy statements or comments by interested persons who are not participating in the hearing. Policy statements will be heard at the start of the hearing, immediately after the hearing officer identifies the parties and other participants. Policy statements are subject to the following provisions in addition to the regulation:
 - i. Policy statements are not subject to the prehearing requirements noted above for testimony or exhibits, except that persons wishing to make policy statements are requested to file a Notice of Intent to Appear, indicating clearly an intent to make only a policy statement.
 - ii. The SWRCB requests that policy statements be provided in writing before they are presented. Please see Section 5, above, for details regarding electronic submittal of policy statements. Oral summaries of the policy statements will be limited to five minutes or such other time as established by the hearing officer.
 - b. **Presentation of Cases in Chief:** Each participant may present a case in chief addressing the key issues identified in the hearing notice. The case in chief will consist of any opening statement provided by the participant, oral testimony, introduction of exhibits, and cross examination of the participant's witnesses. The hearing officer may allow redirect examination and recross

examination. The hearing officer will decide whether to accept the participant's exhibits in evidence upon a motion of the participant after the case in chief has been completed.

- i. **Opening Statements:** At the beginning of a case in chief, the participant or the participant's attorney may make an opening statement briefly and concisely stating the objectives of the case in chief, the major points that the proposed evidence is intended to establish, and the relationship between the major points and the key issues. Oral opening statements will be limited to 20 minutes per participant. A participant may submit a written opening statement. Please see section 5, above, for details regarding electronic submittal of written opening statements. Any policy-oriented statements by a participant should be included in the participant's opening statement.
- ii. **Oral Testimony:** All witnesses presenting testimony shall appear at the hearing. Before testifying, witnesses shall swear or affirm that the written and oral testimony they will present is true and correct. Written testimony shall not be read into the record. Written testimony affirmed by the witness is direct testimony. Witnesses will be allowed up to 20 minutes to summarize or emphasize their written testimony on direct examination.² Each participant will be allowed up to two hours total to present all of its direct testimony.³
- iii. **Cross Examination:** Cross examination of a witness will be permitted on the party's written submittals, the witness' oral testimony, and other relevant matters. If a participant presents multiple witnesses, the hearing officer will decide whether the participant's witnesses will be cross examined as a panel. Cross examiners initially will be limited to one hour per witness or panel of witnesses. The hearing officer has discretion to allow additional time for cross examination if there is good cause demonstrated in an offer of proof. Any redirect examination and recross examination permitted by the hearing officer will be limited to the scope of the cross examination and the redirect examination, respectively. Witnesses may be cross examined on relevant subjects that are not covered in the direct testimony. (Gov. Code, § 11513, subd. (b).) Ordinarily, only a participant or the participant's representative will be permitted to examine a witness, but the hearing officer may allow a participant to designate a person technically qualified in the subject being considered to examine a witness. SWRCB members and the SWRCB's counsel may ask questions at any time, and the SWRCB members and staff may cross examine any witness.
- c. **Rebuttal:** After all participants have presented their cases in chief and their witnesses have been cross-examined, the hearing officer will allow participants to present rebuttal evidence. Rebuttal evidence is new evidence used to rebut evidence presented in another participant's case in chief. Rebuttal testimony and exhibits need not be submitted prior to the hearing. Rebuttal evidence is limited to

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.

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 pre-hearing conference, the hearing officer will decide whether to ask the parties to make oral arguments at the end of the hearing or to set a schedule for the parties to file briefs. If the hearing officer decides to request briefs, the briefs will be due no earlier than 30 days after the estimated date of availability of the Reporter's Transcript. Seven 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. **AUDIO-VISUAL EQUIPMENT:** Participants who require Audio-Visual Equipment for their presentations should contact the Division one week prior to the first day of hearing to make arrangements with staff.
 8. **EX PARTE CONTACTS:** During the pendency of this proceeding, commencing no later than the issuance of the Notice of Hearing, there will be no *ex parte* communications between SWRCB members or the SWRCB staff on the hearing team 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).)
 9. **RULES OF EVIDENCE:** Evidence will be admitted in accordance with Government Code section 11513. Hearsay evidence may be used to supplement or explain other evidence, but over timely objection shall not be sufficient in itself to support a finding unless it would be admissible over objection in a civil action.

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

Division of Water Rights
State Water Resources Control Board
P.O. Box 2000
Sacramento, CA 95812-2000
Attn: Ruben Mora
Phone: (916) 341-5387
Fax: (916) 341-5400
Email: WrHearing@waterrights.swrcb.ca.gov
With Subject of "**SDWA ACL**"

NOTICE OF INTENT TO APPEAR

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

Administrative Civil Liability against Lloyd L. Phelps, Jr., Joey P. Ratto, Jr.,
and Ronald D. Conn and Ron Silva et al.

Scheduled for
January 14, 2003 and continuing, if necessary, on January 15 and 16, 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: _____

Exhibit Identification Index

Participant _____

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