

**STATE WATER RESOURCES CONTROL BOARD
BOARD MEETING SESSION - DIVISION OF WATER RIGHTS
NOVEMBER 18, 2008**

ITEM 10

SUBJECT

CONSIDERATION OF WHETHER TO PROCEED WITH THE INFORMATIONAL FACT-FINDING PROCEEDING DESCRIBED IN THE WATER BOARDS' BAY-DELTA STRATEGIC WORKPLAN

DISCUSSION

On July 16, 2008, the State Water Resources Control Board (State Water Board) adopted the Strategic Workplan for Activities in the San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay-Delta) which describes actions the State Water Board, the Central Valley Regional Water Quality Control Board (Central Valley Regional Water Board), and the San Francisco Bay Regional Water Quality Control Board (San Francisco Bay Regional Water Board) (collectively Water Boards) will take to protect beneficial uses in the Bay-Delta. The Workplan requires a comprehensive review of the 2006 Bay-Delta Water Quality Control Plan (Bay-Delta Plan) and its implementation. As part of that process, the Workplan states that the State Water Board will conduct an informational fact-finding proceeding on critical factual issues concerning the Bay-Delta's ecology under its water quality control planning authority.

Staff has prepared a draft public notice for conducting the informational proceeding in April of 2009 based on the State Water Board's regulations governing informational proceedings. (Cal. Code Regs., tit. 23, § 649 et seq.) This proceeding would be conducted as part of the periodic review of the 2006 Bay-Delta Plan to identify which elements, if any, of the Bay-Delta Plan may need amendment, or whether new elements should be considered for addition to the plan. Staff would prepare a draft periodic review staff report discussing the priorities and ways to address them and the factual basis for those recommendations. Although not required, the informational proceeding would be held to evaluate the factual basis for recommendations in the periodic review staff report. The issues identified for inclusion in the informational proceeding include¹:

1. Delta net outflow objective and variable salinity, and their relationship to fish and wildlife beneficial uses;
2. Sources of salinity to the Bay-Delta;
3. Nutrients, including ammonia and ammonium, and their relationship to fish and wildlife beneficial uses;
4. Delta Cross Channel Gate operations and their relationship to fish and wildlife beneficial uses;
5. Fish screens or other methods of controlling entrainment and impingement, and their relationship to fish and wildlife beneficial uses, at the Central Valley Project, State Water Project, and other non-project facilities in the Bay-Delta;
6. Effects of toxicity on fish and wildlife beneficial uses in the Bay-Delta;

¹ The notice specifies that as time and resources permit, the State Water Board may consider other issues such as climate change.

7. The use of biological indicators or targets as objectives to better protect fish and wildlife beneficial uses in the Bay-Delta;
8. Suisun Marsh water quality objectives and their relationship to fish and wildlife beneficial uses;
9. Inundation of floodplain habitat to better protect fish and wildlife beneficial uses.

The State Water Board will consider whether to proceed with the informational proceeding described in the Workplan. As part of its determination, the State Water Board may consider whether to issue the attached draft notice of informational proceeding or whether to issue a modified notice.

If the State Water Board does not choose to proceed with an informational proceeding, or other related alternative, staff will prepare a draft periodic review staff report, similar in content to that described above. This report will be considered for adoption by the Board at a Board meeting, and interested parties will be provided opportunity to comment. Regardless of which option the State Water Board chooses, if the State Water Board determines that potential changes may be needed to the 2006 Bay-Delta Plan, following adoption of the Periodic Review staff report, a basin planning proceeding will be held to obtain additional information regarding potential changes to the Bay-Delta Plan. The basin planning proceeding would likely begin 3-4 months later if the State Water Board decides to proceed with the informational proceedings, but the informational proceeding may help to focus and expedite the basin planning proceeding.

POLICY ISSUE

Should the State Water Board proceed with the informational fact-finding proceeding described in the Water Boards' Bay-Delta Strategic Workplan and, if so, should the State Water Board issue the draft notice of informational proceeding or a modified notice?

FISCAL IMPACT

None

REGIONAL WATER BOARD IMPACT

The Central Valley Regional Water Board and the San Francisco Bay Regional Water Board will be affected by whether the State Water Board decides to proceed with the informational proceeding. At least six of the topics identified for inclusion in the proceedings (salinity, nutrients, toxicity, biological indicators, Suisun Marsh, and tidal floodplain habitat) would require input and coordination with the regional water boards. Much of this work is directly related to existing, planned, or previous efforts and would require duplication of those efforts in another forum.

STAFF RECOMMENDATION

None



Linda S. Adams
*Secretary for
Environmental Protection*

State Water Resources Control Board

Executive Office

Tam M. Doduc, Board Chair

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Arnold Schwarzenegger
Governor

D R A F T

NOTICE OF PUBLIC PERIODIC REVIEW INFORMATIONAL PROCEEDING

2006 WATER QUALITY CONTROL PLAN FOR THE SAN FRANCISCO BAY/SACRAMENTO-SAN JOAQUIN DELTA ESTUARY

The Pre-Proceeding Conference
will commence on
Wednesday, December 17, 2008 at 10 a.m.

in
the **Coastal Hearing Room**
Joe Serna, Jr. /Cal-EPA Building
1001 I Street
Sacramento, California

The Public Periodic Review Informational Proceeding

will commence
each day at 10 a.m.
and will be held on
April 27, 28, & 29, 2009
in the **Sierra Hearing Room** and
April 30 and May 1, 2009
in the **Coastal Hearing Room**
Joe Serna, Jr. /Cal-EPA Building
1001 I Street
Sacramento, California

1.0 INTRODUCTION

On July 16, 2008, the State Water Resources Control Board (State Water Board) adopted the Strategic Workplan for Activities in the San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay-Delta) which describes actions the State Water Board, the Central Valley Regional Water Quality Control Board, and the San Francisco Bay Regional Water Quality Control Board will take to protect beneficial uses in the Bay-Delta. The Bay-Delta Workplan requires a comprehensive review of the 2006 Bay-Delta Water Quality Control Plan (Bay-Delta Plan) and its implementation. As part of that process, the State Water Board will conduct an informational proceeding on critical factual issues concerning the Bay-Delta's ecology under its water quality

control planning authority. To the extent possible, the State Water Board's factual conclusions "will encourage and support the use of sound science in the Bay-Delta Plan review, Bay Delta Conservation Plan, and Delta Vision processes." (Bay-Delta Workplan, p. 74.)

The informational proceeding will be conducted as part of the State Water Board's periodic review of the 2006 Bay-Delta Plan. During the periodic review, the State Water Board will gather information to identify which elements, if any, of the Bay-Delta Plan may need amendment, or whether new elements should be considered for addition to the plan. The informational proceeding will be conducted the week of **April 27 through May 1, 2009**.

The informational proceeding will be based on the State Water Board's regulations governing informational proceedings. (Cal. Code Regs., tit. 23, § 649 et seq.) It will not be conducted as an adjudicative or rulemaking proceeding under the Administrative Procedure Act. The process for conducting and participating in this proceeding is summarized below and set forth in more detail in Attachment A: *Procedures for Informational Proceeding*. The overall planning context for this informational proceeding is described in Attachment B: *Timeline of Bay-Delta Planning Activities*.

2.0 LEGAL AUTHORITY

The State Water Board performs "both adjudicatory and regulatory functions [of the state] in allocating water rights and ensuring water quality." (*United States v. State Water Resources Control Bd.* (1986) 182 Cal.App.3d 82, 112; Wat. Code, § 174.) The State Water Board has broad authority to carry out these functions, including the authority to "hold any hearings and conduct any investigations in any part of the state necessary to carry out the powers vested in it" (Wat. Code, § 183.) It also may require a state or local agency to investigate or report on technical factors involved in water quality control. (*Id.*, § 13164.)

3.0 PURPOSE OF PROCEEDING

The purpose of this informational proceeding is to summarize and verify basic factual information that will be useful to further address certain water quality issues in the Bay-Delta water quality control planning process. When significant uncertainty about the facts exists, such uncertainty may itself constitute a basic fact. These issues include the following:

1. Delta net outflow objective and variable salinity, and their relationship to fish and wildlife beneficial uses.
2. Sources of salinity to the Bay-Delta.
3. Nutrients, including ammonia and ammonium, and their relationship to fish and wildlife beneficial uses.
4. Delta Cross Channel Gate operations and their relationship to fish and wildlife beneficial uses.
5. Fish screens or other methods of controlling entrainment and impingement, and their relationship to fish and wildlife beneficial uses, at the Central Valley Project, State Water Project, and other non-project facilities in the Bay-Delta.
6. Effects of toxicity on fish and wildlife beneficial uses in the Bay-Delta.

7. The use of biological indicators or targets as objectives to better protect fish and wildlife beneficial uses in the Bay-Delta.
8. Suisun Marsh water quality objectives and their relationship to fish and wildlife beneficial uses.
9. The inundation of floodplain habitat to better protect fish and wildlife beneficial uses.

As time and resources permit, the State Water Board may consider other issues such as climate change. The State Water Board will provide further notice if any such additional issues will be included as part of the informational proceeding.

4.0 SUMMARY OF WATER QUALITY CONTROL PLAN REVIEW AND AMENDMENT PROCESSES

The State Water Board's comprehensive review and potential amendment of the 2006 Bay-Delta Plan will consist of three distinct, but related, phases:

(1) *Periodic Review.*

The State Water Board will conduct a periodic review to identify particular elements of the 2006 Bay-Delta Plan that may need amendment, new elements that may need to be added, or revision of the entire plan. (Wat. Code, § 13240; see also 33 U.S.C. § 303(c)(1) [Clean Water Act provision requiring triennial review of applicable water quality standards].) This periodic review is an informational proceeding and has no regulatory effect. It is neither a rulemaking nor an adjudicative proceeding.

During the periodic review, State Water Board staff will gather input from the public, public entities, and the regional water quality control boards concerning important issues that need to be addressed in the Bay-Delta Plan. Staff then will develop and rank the priority issues, and prepare a report discussing the priorities and ways to address them. Although not required as part of the periodic review, the State Water Board will hold an informational proceeding to evaluate the factual basis for recommendations in the periodic review staff report. The report will be revised as necessary and submitted to the State Water Board for its consideration. The issues approved by the State Water Board will be further examined in greater detail, as discussed below.

(2) *Water Quality Control Plan Amendment.*

The State Water Board may consider amendments to the Bay-Delta Plan. In establishing or revising beneficial uses, water quality objectives, or a program of implementation, the State Water Board acts in a legislative capacity. (See *United States v. State Water Resources Control Bd.*, *supra*, 182 Cal.App.3d at p. 112.) Thus, the plan amendment process is a quasi-legislative process. (*Ibid.*; *State Water Resources Control Bd. Cases* (2006) 136 Cal.App.4th 674, 697.)

In this process, State Water Board staff will prepare any needed plan amendments or revise the entire plan, including any revisions to the program of implementation. State Water Board staff will also prepare any needed environmental documentation pursuant to the California

Environmental Quality Act.² After the draft plan amendments are released to the public, the State Water Board will solicit public comments and hold a public hearing on the draft amendments. After the public hearing, the State Water Board will complete the plan amendments, including responding to any comments on the environmental documentation, and then will consider adopting the revised plan at a board meeting.

(3) *Amendment of Water Rights to Implement the Water Quality Control Plan:*

The State Water Board may subject water rights to terms and conditions the board finds necessary to carry out a water quality control plan, or a water quality control plan may require changes to water rights. The State Water Board would hold an adjudicative proceeding to consider any changes to water rights to implement the plan. The proceeding would be subject to the administrative adjudication provisions of chapter 4.5 of the Administrative Procedure Act (APA) (commencing with Gov. Code, § 11400). (See Cal. Code Regs., tit. 23, § 648 [incorporating provisions of the APA].) An adjudicative proceeding is used to receive evidence to make a decision regarding “a legal right, duty, privilege, immunity, or other legal interest of a particular person.” (Gov. Code, §§ 11405.20, 11405.50.)

5.0 CONDUCT OF INFORMATIONAL PROCEEDING

The State Water Board will conduct this proceeding as an informational proceeding as authorized under its regulations. (Cal. Code Regs., tit. 23, §§ 649, 649.2-649.5.) An informational proceeding includes “hearings designed to gather and assess facts, opinions, and other information relevant to any matters within the jurisdiction of the [State Water Board] and whose primary purposes are to assist the [board] in the formulation of policy or guidelines for future [b]oard action . . .” (*Id.*, § 649, subd. (b).) Attachment A contains a detailed description of the requirements for participating in, and the conduct of, the proceeding.

Summary of Applicable Procedures

As described above, the State Water Board staff will prepare a draft staff report as part of the periodic review, which will propose a list of water quality issues that may be considered for inclusion in the plan amendment process. The draft report will contain recommendations by staff as to whether or in what way it proposes to examine these issues further in the plan amendment process. The draft report will include numbered factual statements based on existing data, reports, and analyses that are relevant to the staff recommendations. The draft report will be available to the public by February 20, 2009.

Interested persons will have an opportunity to submit their own proposed alternate, amended, or additional factual statements related to these issues that would support either the staff recommendations or alternate recommendations. Such persons will be required to file a Notice of Intent to Appear in order to participate in the proceeding. They must submit their proposed alternate, amended, or additional factual statements prior to the proceeding.

Interested persons who agree with the factual basis of the staff recommendations may submit a written statement to that effect any time prior to the beginning of the informational proceeding. They do not need to participate in the proceeding, and do not need to file a Notice of Intent to

² Depending on the scope and timing of any potential changes to the Bay-Delta Plan and its implementation, environmental review for any amendments to the Bay-Delta Plan may be combined with the environmental review for any potential changes to water rights to implement the Bay-Delta Plan and may be conducted to some extent in coordination with the environmental review efforts for the Bay-Delta Conservation Plan.

Appear. Interested persons who wish to propose alternate, amended, or additional factual statements must participate in the proceeding in order for their proposed changes to be considered by the State Water Board.

All persons who testify in the informational proceeding must do so under an oath administered by a presiding officer. (Wat. Code, § 1080.) The State Water Board members and their staff may ask questions at any time during the proceeding. (Cal. Code Regs., tit. 23, § 649.5.) Interested persons will not be allowed to directly cross-examine a witness. Instead, persons who seek clarification of evidence or testimony should submit their questions in writing prior to the commencement of the proceeding. During the proceeding, persons wishing to have additional prior evidence or testimony clarified may request the presiding officer for clarification of an answer or the prior evidence. (*Id.*, § 649.5.) The presiding officer has discretion to grant or deny the request. After the proceeding concludes, the State Water Board staff will revise the recommendations in the draft staff report, and their factual basis, as appropriate.

Use of Information and Conclusions in Subsequent Proceedings

This informational proceeding is not an adjudicative proceeding subject to the administrative adjudication provisions of chapter 4.5 of the Administrative Procedure Act (APA) (commencing with Gov. Code, § 11400), in which the legal rights or duties of a particular person will be determined. (See Cal. Code Regs., tit. 23, § 648 [incorporating provisions of the APA]; Gov. Code, § 11405.50.) The State Water Board's conclusions will not be binding on any parties in any adjudicative proceeding absent a stipulation by those parties. Nor is the proceeding a rulemaking proceeding governed by the APA. Any person who wishes to introduce information produced during the informational proceeding, or the State Water Board's resolution and accompanying documents adopted at the conclusion of the periodic review, into a later rulemaking or adjudicative proceeding must comply with the rules for submission of information or evidence applicable to that proceeding.

6.0 KEY ISSUE

Are the numbered factual statements in the draft periodic review staff report accurate and complete? The numbered factual statements will be organized within the issue areas identified in Section 3.0 of this notice.

7.0 PRESIDING OFFICERS AND STAFF TEAM

State Water Board Vice Chair Gary Wolff, Ph.D., and Board Member Arthur Baggett will preside over this proceeding. Other members of the State Water Board may be present during the pre-proceeding conference and the proceeding. State Water Board staff will include Leslie Grober, Manager of the Hearings and Special Programs Section; Diane Riddle, Staff Environmental Scientist; Erin Mahaney, Senior Staff Counsel; and other State and Regional Water Board staff. The staff will assist the presiding officers and other members of the State Water Board throughout this proceeding.

8.0 PRE-PROCEEDING CONFERENCE

The presiding officers will conduct a pre-proceeding conference to discuss the procedures for the informational proceeding on **Wednesday, December 17, 2008 at 10 a.m.** The goal of the conference is to ensure that the proceeding progresses in an orderly and expeditious manner. The conference will not be used to hear arguments on, or determine the merits of, any factual issues, other than procedural matters. Following the conference, the State Water Board may, at its discretion, modify the procedures or issues set forth in this notice in whole or in part.

9.0 PARTICIPATION IN THE PROCEEDING

If you want to participate in the informational proceeding, you should carefully read Attachment A, entitled "Procedures for Informational Proceeding." As stated in that attachment, persons wishing to present evidence at the proceeding must submit a **Notice of Intent to Appear**, which must be **received** by the State Water Board no later than the deadline below. Only persons who are authorized by the presiding officers to appear will be allowed to present evidence. Participants will be required to submit their written testimony and exhibits to the State Water Board prior to the informational proceeding, but they will not be required to exchange those documents with other participants prior to the proceeding. The State Water Board will make all submitted testimony and exhibits electronically available via its website.

The informational proceeding will be held the week of April 27 through May 1, 2009. The written **testimonies, exhibits, lists of exhibits, and written requests for clarification** must be **received** by the State Water Board no later than the dates listed below.

12:00 Noon Friday, March 20, 2009: Deadline of receipt for Notice of Intent to Appear, written testimony, exhibits, and lists of exhibits

12:00 Noon Friday, April 10, 2009: Deadline of receipt for written requests for clarification

10.0 SUBMITTALS TO THE STATE WATER BOARD

Notices of Intent to Appear, written requests for clarification, proposed factual conclusions, written testimony, and/or other exhibits submitted to the State Water Board should be addressed as follows:

State Water Resources Control Board
Division of Water Rights
Attention: Diane Riddle
P.O. Box 2000
Sacramento, CA 95812-2000
Phone: (916) 341-5297
Fax: (916) 341-5400

Email submittals should be sent to: wrhearing@waterboards.ca.gov
With Subject of "Periodic Review Information Proceeding:
2006 Water Quality Control Plan for the Delta Estuary"

11.0 IF YOU HAVE ANY QUESTIONS

Questions regarding non-controversial procedural matters should be directed to Diane Riddle, Staff Environmental Scientist, at (916) 341-5297 or driddle@waterboards.ca.gov, or Erin Mahaney, Senior Staff Counsel, at (916) 341-5187 or emahaney@waterboards.ca.gov.

12.0 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 is accessible to people with disabilities. Individuals who require special accommodations at the Joe Serna Jr./Cal-EPA Building are requested to contact Catherine Foreman, Office of Employee Assistance, at (916) 341-5881.

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 up to fifteen minutes. Please allow adequate time to sign in before being directed to the hearing.

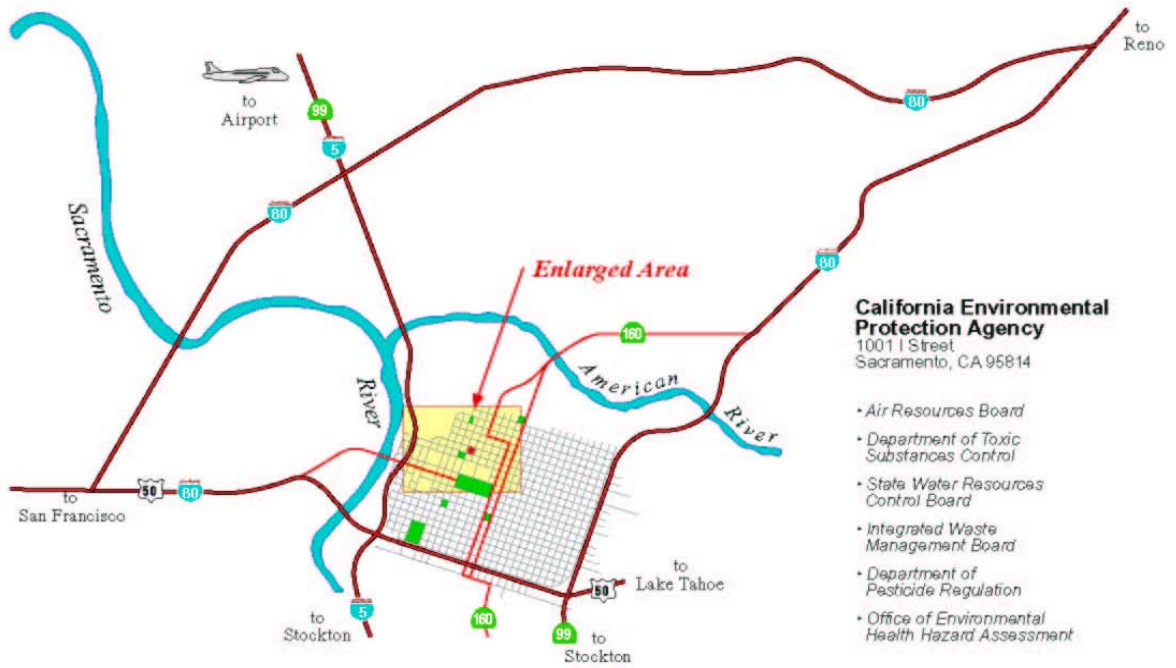
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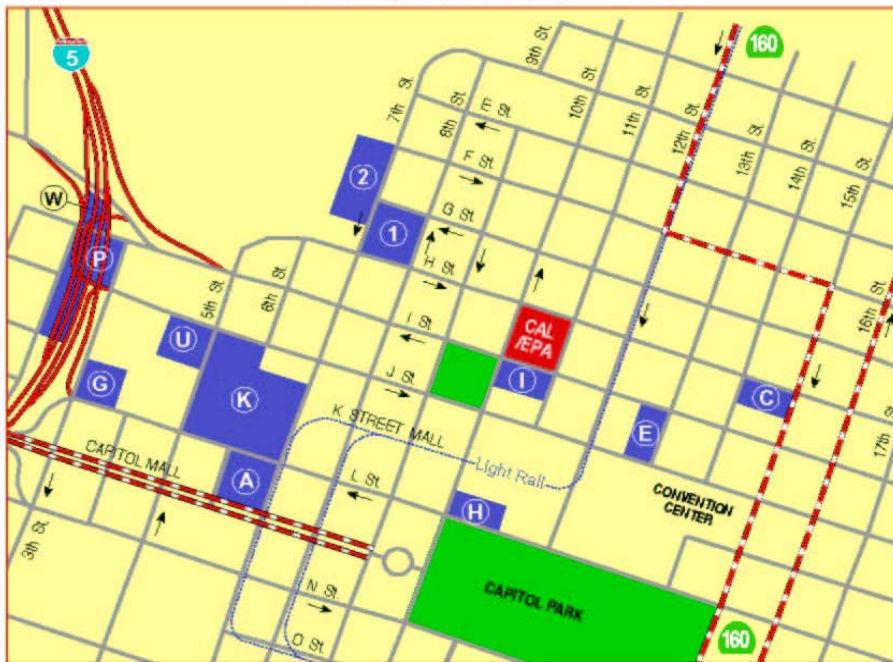
Jeanine Townsend
Clerk to the Board

Enclosures:

- Attachment A: Procedures for Informational Proceeding
- Attachment B: Timeline of Bay-Delta Planning Activities



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.)

ATTACHMENT A

PROCEDURES FOR INFORMATIONAL PROCEEDING

The following procedural requirements will apply in the Bay-Delta informational proceeding:

1. **GENERAL PROCEDURES:** The proceeding will be conducted based on the procedures for informational proceedings set forth at California Code of Regulations, title 23, sections 649.2-649.5. A copy of the regulations may be viewed at the Office of Administrative Law's web site: <http://www.oal.ca.gov/>.

Any requests for exceptions to procedural requirements shall be filed in writing with the State Water Board at least 15 days before the proceeding.

2. **PARTICIPATION:** Interested persons may participate as authorized by the presiding officers. Only persons who are authorized by the presiding officer will be allowed to present evidence or ask clarifying questions.
3. **NOTICE OF INTENT TO APPEAR:** Interested persons may submit their own proposed alternate, amended, or additional evidence that would support either the staff recommendations in the draft periodic review or alternate recommendations.

Persons who wish to present alternate, amended, or additional factual statements must file two copies of a Notice of Intent to Appear, which must be **received** by the State Water Board no later than **12 noon on Friday, March 20, 2009**. Failure to submit a Notice of Intent to Appear in a timely manner may be interpreted by the State Water Board as intent not to appear. Participants who decide not to present alternate, amended, or additional factual statements after having submitted a Notice of Intent to Appear should notify the State Water Board as soon as possible.

Participants who submit alternate, amended, or additional factual statements must provide supporting scientific references for those statements. They must attempt to introduce the author of the exhibit supporting those statements as a witness, since authors are best qualified to answer questions on their studies and reports. If the author is unavailable, the participant may present the evidence themselves. The State Water Board is interested in factual statements based on well-documented data-based scientific studies rather than opinions – even expert ones – unless they clearly flow from the supporting studies.

The Notice of Intent to Appear must contain: (1) the name and address of the participant; (2) proposed alternate, amended, or additional factual statements; (3) the exhibits supporting the new evidence; (4) the name of each witness who will testify on the participant's behalf regarding the proposed factual statements and the exhibits; (5) a brief description of each witness' 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 their testimony. The witness's testimony must be submitted in writing as described below.

The State Water Board encourages participants to submit the Notice of Intent to Appear, proposed alternate, amended, or additional factual statements, written testimony, exhibits,

and an Exhibit Identification Index to the State Water Board in electronic form. Participants are not required to submit these documents in electronic form; however, those who choose to submit these documents electronically must comply with the requirements described below.

The State Water Board will promptly post the Notices of Intent to Appear and supporting exhibits on its website. Participants will not be required to exchange information.

4. **WRITTEN STATEMENT OF AGREEMENT:** Interested persons who agree with the recommendations or factual statements made in the draft Periodic Review may submit a written statement to that effect any time prior to the beginning of the informational proceeding. Such persons do not need to participate in the proceeding, and do not need to file a Notice of Intent to Appear. Interested persons who wish to propose alternate, amended, or additional factual statements must participate in the proceeding in order for their proposals to be considered by the State Water Board.
5. **REQUEST TO CLARIFY PROPOSED FACTUAL STATEMENTS, EVIDENCE, OR TESTIMONY:** Persons who do not intend to present evidence but wish to have proposed factual statements, testimony, or exhibits clarified must submit a written request for clarification. The request must be received by the State Water Board no later than **12 noon on Friday, April 10, 2009**. The request for clarification must include: (1) the name and address of the person seeking clarification; (2) the proposed factual statements, testimony, or exhibits that the person wishes to have clarified; and (3) specific clarifying questions regarding the evidence or testimony. Requests for clarification will be granted at the discretion of the presiding officer.
6. **WRITTEN TESTIMONY AND OTHER EXHIBITS:** Exhibits include proposed alternate, amended, or additional factual statements, written testimony, and supporting documents. Each participant proposing to present testimony on factual matters shall submit such testimony in writing. 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: seven paper copies of each of its exhibits; or five paper copies and one electronic copy of each of its exhibits. With its exhibits, each participant must submit to the State Water Board a completed Exhibit Identification Index. If possible, each participant should submit to the State Water Board an electronic copy, as well as a paper copy, of the Exhibit Identification Index. Please see section 7 for details regarding electronic submissions.

The State Water Board will promptly post the exhibits on its website at:
http://www.waterrights.ca.gov/baydelta/periodic_review.html.

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 presiding officer has 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 proceeding is issued. A participant offering an exhibit by reference shall advise 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 submit the exhibit to the State Water Board in electronic form, using a file format readable by Microsoft Office 2003 software or in Adobe Portable Document Format (PDF).
 - d. Exhibits that rely on unpublished technical documents will be excluded unless the unpublished technical documents are admitted as exhibits.
 - e. Participants submitting large format exhibits such as maps, charts, and other graphics shall submit the original exhibit in a form that can be folded to 8 ½ x 11 inches. Alternatively, participants may submit a reduced copy of a large format original if it is readable.
7. **ELECTRONIC SUBMISSIONS:** Participants are encouraged to submit the following documents to the State Water Board in electronic form: written testimony; exhibits; requests for clarification, and Exhibit Identification Indexes.
- Any documents submitted or served electronically must be in PDF format, except for Exhibit Identification Indexes, which must be in a version supported by Microsoft Excel or Word. Electronic submittals to the State Water Board of documents less than 15 megabytes (incoming mail server attachment limitation) in total size may be sent via electronic mail to: wrhearing@waterboards.ca.gov with a subject of "**Periodic Review Information Proceeding: 2006 Water Quality Control Plan for the Delta Estuary.**" Electronic submittals to the State Water Board of documents greater than 15 megabytes in total size should be sent by regular mail in PDF format on compact disc media.
8. **ORDER OF PROCEEDING:** The State Water Board member serving as presiding officer will follow the Order of Procedure specified in California Code of Regulations, title 23, section 649.3. The time limits specified below may be changed by the presiding officer, at his or her discretion, as a result of the pre-proceeding conference.
- a. **Introduction of Staff Exhibits:** The State Water Board will invite authors of proposed staff exhibits to participate in the informational proceeding. If an author is unavailable, staff may briefly summarize the exhibit's conclusions at the beginning of the proceeding for the convenience of the parties or the proceeding.

- b. **Presentation of Testimony or Exhibits**: Each participant may present testimony or exhibits addressing factual statements relevant to the content of the draft Periodic Review. The presiding officers may exclude any exhibits they determine are not relevant to the content of the draft Periodic Review.
- i. **Oral Testimony**: All witnesses presenting testimony shall appear at the proceeding. 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. Witnesses will be allowed up to 20 minutes to summarize or emphasize their written testimony. Each participant will be allowed up to two hours total to present all of its direct testimony.³
 - ii. **Questioning**: The presiding officer, Board Members, or staff may ask questions at any time.
 - iii. **Written Requests for Clarification**: The presiding officer may ask the witness to respond to written requests for clarification.
 - iv. **Additional Requests for Clarification**: Persons who wish to have prior evidence or comments clarified and who have not submitted a written request for clarification, or who have submitted such a written request but have additional questions, may request the presiding officer to obtain the answer or clarification. The presiding officer may allow additional answers to be given as appropriate, based on the considerations identified in California Code of Regulations, title 23, section 649.5.

³ The presiding officer may, for good cause, approve a participant's request to use more than two hours total to present testimony.

ATTACHMENT B

TIMELINE OF BAY-DELTA PLANNING ACTIVITIES

September 29, 2008: Received public input on August 29, 2008 request for public input regarding critical factual issues concerning the Bay-Delta's ecology and the impacts of water pollution and diversions that the State Water Board should hold informational proceedings on to establish essential facts. These essential facts will be used to inform review of the 2006 Bay-Delta Plan and other basin planning and related proceedings.

October 8, 2008: State Water Board workshop to receive information concerning Periodic Review of the 2006 Bay-Delta Plan to identify what elements of the Bay-Delta Plan (in addition to southern Delta salinity and San Joaquin River flows) may need amendment, or whether new elements should be considered for addition to the plan. Comments for this workshop were due October 1.

November 2008: Determination made regarding which issues the State Water Board will conduct informational proceedings as part of the Periodic Review.

December 17, 2008: Pre-hearing conference to discuss procedures for informational proceeding.

First Quarter 2009: Hold a CEQA scoping meeting regarding potential changes to the southern Delta salinity and San Joaquin River flow objectives and water right requirements implementing those objectives. Following the meeting, commence any needed environmental documentation for possible changes to these objectives and water rights.

Note that the scoping meeting for southern Delta salinity and San Joaquin River flows will therefore precede scoping decisions for other elements of the Bay-Delta Plan (see below).

February 20, 2009: Release a draft Periodic Review staff report of the 2006 Bay-Delta Plan. Recommendations in the draft Periodic Review staff report will be supported by summaries of relevant scientific studies and factual statements based on those studies. The draft Periodic Review staff report shall specifically recommend for or against commencing basin planning (quasi-legislative) proceedings in the areas identified for review in the "Notice of Public Periodic Review Informational Proceeding."

April 27 through May 1, 2009: Hold an informational hearing on the draft Periodic Review of the 2006 Bay-Delta Plan. The purpose of the hearing is to check the facts that are used to support the recommendations in the draft Periodic Review staff report released on February 20, 2009. The hearing will follow the procedures in Attachment A of this hearing notice package, as they may be modified following the pre-hearing conference on December 17, 2008, described above.

June 2009: The State Water Board will consider adopting a final Periodic Review staff report of the 2006 Bay-Delta Plan, which contains recommendations for subsequent basin planning proceedings.

Following Adoption of the Periodic Review Staff Report: Written determination made by the State Water Board and Bay-Delta Conservation Plan (BDCP) lead agencies regarding what, if any, elements of the of the Bay-Delta Plan review will be addressed in the BDCP environmental review process. Agreement(s) may be executed to assure that any elements of the Bay-Delta Plan review that will be addressed in the BDCP environmental review process will include a broad range of alternatives that are thoroughly analyzed to the State Water Board's satisfaction.

Through Completion of Environmental Documentation: Continue preparation of any needed environmental documentation for potential changes to the 2006 Bay-Delta Plan, including any needed coordination with BDCP environmental review work. The BDCP environmental review document will be used to the maximum extent feasible to address environmental review issues that arise from the Periodic Review. However, since at least some elements of the environmental documentation will likely be outside the scope of the BDCP project (e.g., San Joaquin River flows), close coordination of environmental documents will be required on an on-going basis. If necessary, the agreement with BDCP described above will be amended.