

73-720 Fred Waring Drive, Suite 100  
Palm Desert, CA 92260  
(760) 346-7491

Public Notice 7-11-34  
NPDES Permit No. CA70000004  
August 22, 2011

NOTICE OF PUBLIC HEARING AND HEARING PROCEDURE  
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT  
NO. R7-2011-0041  
ISSUED TO IMPERIAL IRRIGATION DISTRICT, OWNER/OPERATOR  
GRASS CARP HATCHERY  
El Centro – Imperial County

**NOTICE IS HEREBY GIVEN THAT A HEARING WILL BE HELD  
BEFORE THE REGIONAL WATER BOARD ON NOVEMBER 17, 2011**

**Background**

The Assistant Executive Officer of the Colorado River Basin Regional Water Quality Control Board (Regional Water Board) has issued an Administrative Civil Liability (ACL) Complaint pursuant to California Water Code Section 13323 (CWC) to the Imperial Irrigation District, owner and operator of the Grass Carp Hatchery, (hereinafter, Discharger) alleging that it has violated Waste Discharge Requirements Order No. R7-2010-0023 (NPDES No CA7000004). The Complaint proposes that a mandatory minimum penalty in the amount of \$21,000 be imposed as authorized by CWC Section 13385. Unless the Discharger waives its right to a hearing and pays the proposed liability, the hearing will be held before the Regional Water Board during its meeting of November 17, 2011. The deadline for waiving the hearing and all other procedural deadlines are listed in the Table of Important Deadlines (Table) at the end of this Notice. Also, please note that all requests, objections, and any other material submissions for which a deadline has been specified **must be received no later than 5:00 p.m. on the date specified. Unless the recipient(s) indicate otherwise, all written requests and submissions may be provided electronically.**

**Purpose of Hearing**

The purpose of the hearing is to receive relevant evidence and testimony regarding the proposed ACL Complaint. At the hearing, the Regional Water Board will consider whether to adopt, modify, or reject the proposed assessment. If it adopts the proposed assessment, the Regional Water Board will issue an Administrative Civil Liability Order. The public hearing on November 17, 2011 will commence at 10:00 a.m. or as soon thereafter as practical, or as announced in the Regional Water Board's meeting agenda. The meeting will be held in La Quinta, California at the City Hall Council Chambers located at 78-495 Calle Tampico. An agenda for the meeting will be issued at least ten days before the meeting and will be posted on the Regional Water Board's web page at <http://www.waterboards.ca.gov/coloradoriver>.

## Hearing Procedures

The hearing will be conducted in accordance with this hearing procedure. This hearing procedure has been pre-approved by the Regional Water Board's Advisory Team in model format; but the Advisory Team may modify the procedure on its own or at the request of any designated party. A copy of the procedures governing an adjudicatory hearing before the Regional Water Board may be found at Title 23 of the California Code of Regulations (CCRs), Section 648 et seq., and is available at <http://www.waterboards.ca.gov> or upon request. In accordance with Title 23, CCR, Section 648(d), any procedure not provided by this hearing procedure is deemed waived. Except as provided in Title 23, CCR, Section 648(b), Chapter 5 of the Administrative Procedure Act (commencing with Section 11500 of the Government Code) does not apply to adjudicatory hearings before the Regional Water Board. This Notice provides additional requirements and deadlines related to this proceeding.

THE PROCEDURES AND DEADLINES DESCRIBED IN THIS NOTICE MAY BE AMENDED BY THE ADVISORY TEAM AS NECESSARY. **ANY OBJECTIONS TO THIS HEARING PROCEDURE MUST BE RECEIVED BY THE REGIONAL WATER BOARD'S ADVISORY TEAM BY 5:00 P.M. ON THE DATE SPECIFIED IN THE TABLE, OR THEY WILL BE WAIVED.** FAILURE TO COMPLY WITH THE DEADLINES AND REQUIREMENTS CONTAINED HEREIN MAY RESULT IN THE EXCLUSION OF DOCUMENTS AND/OR TESTIMONY.

## Hearing Participation

Participants in this proceeding are designated either as "parties" or as "interested persons." Designated parties to the hearing may present evidence and cross-examine witnesses and are subject to cross-examination. Interested persons may present non-evidentiary policy statements, but may not cross-examine witnesses and are not subject to cross-examination. Both designated parties and interested persons may be asked to respond to clarifying questions from the Regional Water Board, staff, or others at the discretion of the Regional Water Board.

The following participants are hereby designated as parties in this proceeding:

- (1) Regional Water Board Prosecution Team
- (2) Imperial Irrigation District, Owner/Operator of the Grass Carp Hatchery

## Requesting Designated Party Status

Persons who wish to participate in the hearing as a designated party shall request party status by submitting a request in writing to Advisory Team counsel, Tom Vandenberg, with copies to the designated parties, **no later than 5:00 p.m. on the date specified in the Table.** The request shall include an explanation of the basis for status as a designated party (e.g., how the issues to be addressed in the hearing and the potential actions by the Regional Water Board could affect the person), the information required of designated parties as provided below, and a statement explaining why the party or parties designated above do not adequately represent the person's interest. Any opposition to

the request must be submitted to Mr. Vandenberg **no later than 5:00 p.m. on the date specified in the Table**. The parties will be notified in writing by Mr. Vandenberg by **5:00 p.m. on the date specified in the Table** whether the request has been granted or denied.

## **Contacts**

### **Advisory Team:**

Robert Perdue, Executive Officer  
Colorado River Basin Regional Water Quality Control Board  
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Palm Desert, CA 92260  
[rperdue@waterboards.ca.gov](mailto:rperdue@waterboards.ca.gov)

Tom Vandenberg, Staff Counsel  
Office of Chief Counsel  
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Jon Rokke, Water Resource Control Engineer  
Colorado River Basin Regional Water Quality Control Board  
73-720 Fred Waring Drive, Suite 100  
Palm Desert, CA 92260  
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### **Prosecution Team:**

Jose Angel, Assistant Executive Officer  
Colorado River Basin Regional Water Quality Control Board  
73-720 Fred Waring Drive, Suite 100  
Palm Desert, CA 92260  
[jangel@waterboards.ca.gov](mailto:jangel@waterboards.ca.gov)

Ellen Howard, Staff Counsel  
Office of Enforcement  
1001 I Street, 16<sup>th</sup> Floor  
Sacramento, CA 95816  
[ehoward@waterboards.ca.gov](mailto:ehoward@waterboards.ca.gov)

Doug Wylie, Senior Water Resource Control Engineer  
Colorado River Basin Regional Water Quality Control Board  
73-720 Fred Waring Drive, Suite 100  
Palm Desert, CA 92260  
[dwyllie@waterboards.ca.gov](mailto:dwyllie@waterboards.ca.gov)

## **Discharger:**

Kevin E. Kelley, General Manager  
Imperial Irrigation District  
333 E. Barioni Boulevard  
Imperial, CA 92251

## **Preliminary Witness List**

The Prosecution Team does not expect to testify at this public hearing, and also does not expect any other witnesses to testify. Therefore, there is no preliminary witness list. The Prosecution Staff will update the preliminary witness list, if necessary, by **5:00 p.m. on the date specified in the Table.**

## **Separation of Functions**

To help ensure the fairness and impartiality of this proceeding, the functions of those who will act in a prosecutorial role by presenting evidence for consideration by the Regional Water Board (Prosecution Team) have been separated from those who will provide advice to the Regional Board (Advisory Team). Members of the Advisory Team are: Robert Perdue, Executive Officer; Tom Vandenberg, Staff Counsel; and Jon Rokke, Water Resource Control Engineer. Members of the Prosecution Staff are: Jose Angel, Assistant Executive Officer; Ellen Howard, Staff Counsel; and Doug Wylie, Senior Water Resource Control Engineer. Although members of the Prosecution Team may have acted as advisors to the Regional Water Board in other, unrelated matters, they are not advising the Regional Water Board in this proceeding. Accordingly, the members of the Prosecution Team have not engaged in any *ex parte* communications, as defined below, with members of the Regional Water Board or the Advisory Team regarding this proceeding.

## **Ex Parte Communications**

The designated parties and interested persons are forbidden from engaging in *ex parte* communications regarding this matter with members of the Advisory Team or members of the Regional Water Board. An "*ex parte* communication" is any written or verbal communication pertaining to the investigation, preparation, or prosecution of the ACL Complaint between a member of a designated party or interested party on the one hand, and a Regional Water Board member or an Advisory Team member on the other hand, unless the communication is copied to all other designated and interested parties or made at a proceeding open to all other parties and interested persons (if verbal). Communications regarding non-controversial procedural matters are not *ex parte* communications and thus, are not restricted. Communications among the designated and interested parties themselves are also not *ex parte* communications.

## **Hearing Time Limits**

To ensure that all participants have an opportunity to participate in the hearing, the following time limits shall apply: Each designated party shall have 15 minutes to testify,

present evidence, and cross-examine witnesses, and each interested person shall have 3 minutes to present a non-evidentiary policy statement. Participants with similar interests or comments are requested to make joint presentations, and participants are requested to avoid making redundant comments. Additional time may be provided at the discretion of the Advisory Team (prior to the hearing) or the Regional Water Board Chair (at the hearing) upon a showing that additional time is necessary.

### **Written Evidence, Testimony, Exhibits, and Policy Statements**

**Prosecution Team:** Send to Tom Vandenberg, the Discharger, and any other designated parties by **5:00 p.m. on the date specified in the Table.**

**Discharger:** Send to Tom Vandenberg, the Prosecution Team, and any other designated parties by **5:00 p.m. on the date specified in the Table.**

1. All evidence, testimony (except rebuttal testimony) and exhibits proposed to be offered at the hearing. Evidence and exhibits already in the public files of the Regional Water Board may be submitted by reference so long as the exhibits and their location are clearly identified in accordance with Title 23, CCR, Section 648.3.
2. All legal and technical arguments or analysis.
3. The name of each witness, if any, whom the designated party intends to call at the hearing, the subject of each witness' proposed testimony, and the estimated time required by each witness to present direct testimony.
4. The qualifications of each expert witness, if any.

In lieu of electronically transmitting copies of the above information, the Prosecution Team may create an "ftp" website or similar electronic data website containing this information so long as it is accessible to the Advisory Team, the Discharger, and any other designated party. If such a website is used, the Prosecution Team shall confirm as soon as possible with the Advisory Team, the Discharger, and any other designated party that the website is accessible. If the website is not accessible to any party, the Prosecution Team shall provide the information contained on the website to that party in electronic form, unless otherwise directed by that party.

Any designated party, who would like to submit information that rebuts the information previously submitted by other designated parties, may provide that rebuttal information to Tom Vandenberg, the Discharger, and all other designated parties **no later than 5:00 p.m. on the date specified in the Table** in electronic form, unless otherwise directed by the recipient(s). Rebuttal information shall be limited to the scope of the information previously submitted by the other designated parties. Rebuttal information that is not responsive to information previously submitted by other designated parties may be excluded.

Interested persons may submit one (1) paper copy of non-evidentiary policy statements by the close of the hearing.

In accordance with Title 23, CCR, Section 684.4, the Regional Water Board endeavors to avoid surprise testimony or evidence. Accordingly, oral testimony offered at the hearing that is beyond the scope of the previously submitted written testimony may be excluded. Power Point and other computer assisted visual presentations must be submitted to the Advisory Team by **5:00 p.m. on the date specified in the Table**. Electronic submissions are acceptable, unless otherwise directed by any intended recipient(s). Any witness providing written testimony shall appear at the hearing and affirm that the written testimony is true and correct.

### **Request for Pre-hearing Conference**

A designated party may request that a pre-hearing conference be held before the hearing in accordance with Water Code Section 13228.15. A pre-hearing conference may address any of the matters described in Government Code Section 11511.5(b), including, but not limited to, the following matters:

- (1) Exploration of settlement possibilities;
- (2) Preparation of stipulations;
- (3) Clarification of issues;
- (4) Rulings on identity and limitation of the number of witnesses;
- (5) Objections to proffers of evidence;
- (6) Order of presentation of evidence and cross-examination;
- (7) Rulings regarding issuance of subpoenas and protective orders;
- (8) Schedules for the submission of written briefs and schedules for the commencement and conduct of the hearing; and,
- (9) Exchange of witness lists and of exhibits or documents to be offered in evidence at the hearing.

Requests must contain a description of the issues proposed to be discussed during that conference, and must be submitted as early as practicable to the Advisory Team with a copy to all other designated parties. The requests may be electronically submitted, unless otherwise directed by any recipient(s). No party who participates in a pre-hearing conference is precluded from appearing before the Regional Water Board at any subsequent hearing relating to the matter.

### **Evidentiary Objections**

Any designated party objecting to evidence, testimony, or exhibits submitted by another designated party must submit a written objection (electronic submission is acceptable, unless otherwise directed by any recipient) to the Advisory Team with a copy to all other designated parties by **5:00 p.m. on the date specified in the Table**. The Advisory Team will notify the parties in writing as soon as possible about further action to be taken on such objections and when that action will be taken. At the discretion of the Advisory Team, a pre-hearing telephonic conference may be scheduled to discuss any further actions to be taken on the objections.

## **Evidentiary Documents and File**

The ACL Complaint, related evidentiary documents, and comments received are on file and may be inspected or copied at the office of the Colorado River Basin Regional Water Quality Control Board, 73-720 Fred Waring Drive, Suite 100, Palm Desert, CA. This file shall be considered part of the official administrative record for this hearing. Other submittals received for this proceeding will be added to this file and will become a part of the administrative record, absent a contrary ruling by the Regional Water Board Chair. In addition, many of these documents may also be posted on-line at [www.waterboards.ca.gov/coloradoriver](http://www.waterboards.ca.gov/coloradoriver). Although the web page is updated regularly, please contact Doug Wylie at [dwylic@waterboards.ca.gov](mailto:dwylic@waterboards.ca.gov) or (760) 346-6585 to assure access to the latest information.

## **Questions**

Questions concerning this proceeding may be addressed to Tom Vandenberg by e-mail at [tvandenberg@waterboards.ca.gov](mailto:tvandenberg@waterboards.ca.gov) or by phone at (916) 341-5195.

## **TABLE OF IMPORTANT DEADLINES**

August 22, 2011	Prosecution Team issues ACL Complaint to Discharger and Advisory Team, electronically posts the Notice of Public Hearing and Hearing Procedure, and sends the Discharger a copy of the Notice.
September 6, 2011	Deadline for objections, if any, to proposed hearing procedure.
September 9, 2011	Deadline for requests for designated party status.
September 20, 2011	Deadline for oppositions to requests for designated party status.
September 20, 2011	Discharger's deadline for waiving right to hearing.
September 20, 2011	Discharger's deadline for submitting proposed Compliance Project or Supplemental Environmental Project, if applicable, for consideration at the Board hearing.
September 29, 2011	Prosecution Team's deadline for submitting all information required under "Written Evidence, Testimony, Exhibits, and Policy Statements" and for updating Preliminary Witness List.
September 29, 2011	Advisory Team issues decision on any requests for designated party status.
October 19, 2011	Remaining Designated Parties' deadline for submitting all information required under "Written Evidence, Testimony, Exhibits, and Policy Statements."
October 29, 2011	Designated Parties' deadline for submitting any evidentiary objections.
November 7, 2011	Designated Parties' deadline for submitting any rebuttal information, Power Point, and other computer assisted visual presentations for use at the hearing.
November 17, 2011	Hearing Date.