

NOTICE OF PUBLIC HEARING AND HEARING PROCEDURE  
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT  
R7-2016-0021  
ISSUED TO IMPERIAL IRRIGATION DISTRICT  
GRASS CARP HATCHERY  
EL CENTRO – IMPERIAL COUNTY

**NOTICE IS HEREBY GIVEN THAT A HEARING WILL BE HELD  
BEFORE THE REGIONAL BOARD ON JUNE 30, 2016**

**Background**

The Interim Assistant Executive Office has issued an Administrative Civil Liability Complaint (Complaint) pursuant to California Water Code (Water Code) section 13323 to the Imperial Irrigation District, owner and operator of the Grass Carp Hatchery, (hereinafter referred to as Discharger) alleging that the Discharger exceeded the effluent limitations for total suspended solids set forth in Waste Discharge Requirements (WDRs) Order R7-2010-0023 (NPDES No. CA7000004). The Complaint proposes that administrative civil liability in the amount of \$111,000.00 be imposed as authorized by Water Code section 13385, subdivisions (h) and (i). Unless the Discharger waives its right to a Hearing and pays the proposed liability, the Hearing will be held before the Regional Board during its meeting of June 30, 2016. The deadline of May 2, 2016 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 Complaint. At the Hearing, the Regional Board will consider whether to adopt, modify, or reject the proposed assessment up to the maximum penalty provided by law. If it adopts the proposed assessment, the Regional Board will issue an Administrative Civil Liability Order. The Public Hearing on June 30, 2016 will commence at 9:00 a.m. or as soon thereafter as practical, or as announced in the Regional Board's meeting agenda. The meeting will be held in the City of Palm Desert, California, at the Board Room of the Colorado River Basin Water Board, located at 73-720 Fred Waring Drive, Suite 100. An agenda for the meeting will be issued at least ten days before the meeting and will be posted on the Regional Board's web page at <http://www.waterboards.ca.gov/coloradoriver>. The agenda will include the final hearing date and location, and estimated start time for the hearing.

**Hearing Procedures**

The Hearing will be conducted in accordance with this Hearing procedure. This Hearing procedure has been pre-approved by the Colorado River Basin 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 Colorado River Basin Water Board may be found at Title 23 of the California Code of Regulations (CCRs), [section 648 et seq.](#), and is available upon request or can be found at [http://www.waterboards.ca.gov/coloradoriver/board\\_info/agenda/docs/bm\\_procedures.pdf](http://www.waterboards.ca.gov/coloradoriver/board_info/agenda/docs/bm_procedures.pdf). In accordance with Title 23, CCRs, section 648(d), any procedure not provided by this hearing procedure is deemed waived. Except as provided in Title 23, CCRs, 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 Colorado River Basin 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 Board, staff, or others at the discretion of the Regional Board.

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

- (1) Regional Board Prosecution Team
- (2) Imperial Irrigation District

### **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 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:**

Jose Angel, Interim Executive Officer  
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### **Prosecution Team:**

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**Discharger:**

Michael Pacheco, Water Department Manager  
Imperial Irrigation District  
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Imperial, CA 92251  
[mapacheco@iid.com](mailto:mapacheco@iid.com)

Michael R. Mizumoto, Supervisor Bio-Control Unit  
Imperial Irrigation District  
333 East Barioni Boulevard  
Imperial, CA 92251  
[mrmizumoto@iid.com](mailto:mrmizumoto@iid.com)

**Preliminary Witness List**

The Prosecution Team expects to testify at this Public Hearing. 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: Jose Angel, Interim Executive Officer; Tom Vandenberg, Staff Counsel. Members of the Prosecution Staff are: Abdi Haile, Interim Assistant Executive Officer; Anna Kathryn Benedict, Senior Staff Counsel; Kai Dunn, Water Resources Control Engineer; Maribel Jernegan, Sanitary Engineering Associate; and Jose Figueroa-Acevedo, Water Resource Control Engineer. Although members of the Prosecution Team may have acted as advisors to the Regional 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 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 Board. An “*ex parte* communication” is any written or verbal communication pertaining to the investigation, preparation, or prosecution of the Complaint between a member of a designated party or interested party on the one hand, and a Regional 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 25 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 Board Chair (at the Hearing) upon a showing that additional time is necessary.

### **Submission of Evidence 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 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 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). Additionally, 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 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 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 Board Chair. In addition, many of these documents may also be posted on-line at [www.waterboards.ca.gov/coloradriver](http://www.waterboards.ca.gov/coloradriver). Although the web page is updated regularly, please contact Maribel Jernegan at [Maribel.Jernegan@waterboards.ca.gov](mailto:Maribel.Jernegan@waterboards.ca.gov) or (760) 776-8941 to assure access to the latest information.

## **Questions**

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

## **TABLE OF IMPORTANT DEADLINES**

April 13, 2016	Prosecution Team issues 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.
April 20, 2016	Deadline for objections, if any, to proposed hearing procedure.
April 25, 2016	Deadline for requests for designated party status.
April 28, 2016	Deadline for oppositions to requests for designated party status.
May 2, 2016	Discharger's deadline for waiving right to hearing.
May 6, 2016	Advisory Team issues decision on any requests for designated party status.
May 16, 2016	Prosecution Team's deadline for submitting all information required under "Submission of Evidence and Policy Statements" and Preliminary Witness List.
June 1, 2016	Remaining Designated Parties' deadline for submitting all information required under "Submission of Evidence and Policy Statements".
June 10, 2016	Designated Parties' deadline for submitting any evidentiary objections.
June 15, 2016	Prosecution Team's deadline for submitting any rebuttal information.
June 15, 2016	Designated Parties' deadline for submitting, Power Point, and other computer assisted visual presentations for use at the hearing.
June 30, 2016	Hearing Date.