



**Winston H. Hickox**  
Secretary for  
Environmental  
Protection

# State Water Resources Control Board

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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 website at [www.swrcb.ca.gov](http://www.swrcb.ca.gov).*

September 26, 2003

To: Enclosed Cachuma Hearing Service List

CACHUMA PROJECT HEARING – APPLICATIONS 11331 AND 11332

This letter addresses a number of procedural issues concerning participation in Phase 2 of the Cachuma Project Hearing. By this letter, I am also ruling on California Trout, Incorporated's (CalTrout) Motion for Protective Order Restricting Discovery and related discovery motions.

### Updated Service List

We have updated the service list to indicate which participants have agreed to accept electronic service. A copy of the revised service list is enclosed, and has been posted on the State Water Resources Control Board's (SWRCB) website at:  
[www.waterrights.ca.gov/hearings/cachumahearing.htm](http://www.waterrights.ca.gov/hearings/cachumahearing.htm).

### Additional Hearing Dates

Based on the revised Notices of Intent to Appear, it appears that additional hearing dates will be required. We have scheduled additional hearing times and dates. Originally, the hearing was scheduled for half a day on October 21, 2003, from 9:00 a.m. until 1:00 p.m. We have made arrangements to schedule the hearing for the entire day. In addition to that day and to the October 22 and 23 dates originally scheduled, the hearing will continue on November 12 at 10:00 a.m. and, if necessary, on November 13 at 9:00 a.m. in the Sierra Hearing Room.

### Order of Appearances and Related Issues

Several parties have requested advance notice of the order of appearances so that they can estimate when they will be expected to appear. The following order of appearances is tentative. I may modify the order based on scheduling conflicts or for other good cause.

1. U.S. Bureau of Reclamation
2. Cachuma Conservation Release Board and Santa Ynez River Water Conservation District, Improvement District No. 1 (coordinated cases-in-chief)
3. Santa Ynez River Water Conservation District
4. City of Lompoc
5. City of Solvang
6. Santa Barbara County
7. California Department of Water Resources
8. California Department of Fish & Game
9. NOAA Fisheries
10. CalTrout
11. California Sportfishing Protection Alliance
12. Dos Pueblos Associates, LLC

As indicated above, the Cachuma Conservation Release Board (CCRB) and Santa Ynez River Water Conservation District, Improvement District No. 1 (SYRWCD, ID No. 1) have asked to present coordinated cases-in-chief. The SWRCB encourages hearing participants to coordinate their cases to the extent possible. This request is granted.

CalTrout has informed the SWRCB that one of its witnesses, Tom Keegan, is unavailable on October 21 or October 22. Based on the order of appearances, CalTrout will not be expected to present its case-in-chief any sooner than November 12, 2003. Therefore, Mr. Keegan's unavailability will not be a problem.

Several parties have indicated that they intend to take more than 20 minutes per witness or more than a total of two hours to summarize their direct testimony. I will evaluate whether to allow the parties additional time after I have had the opportunity to review written testimony. I will address this issue at the beginning of Phase 2 of the hearing on October 21.

#### CalTrout's Discovery Motions

On September 12, 2003, CCRB and SYRWCD, ID No. 1 noticed the depositions of four of the expert witnesses listed on CalTrout's Revised Notice of Intent to Appear: Tom Keegan, Peter Moyle, Ed Keller, and Ed Zapel. The notices of deposition set the depositions of Tom Keegan and Peter Moyle for October 1, 2003, in Sacramento and set the depositions of Ed Keller and Ed Zapel for October 3, 2003, in Santa Barbara. CCRB and SYRWCD, ID No. 1 seek to depose the four witnesses on the subjects of their direct testimony, as described in CalTrout's Revised Notice of Intent to Appear. CCRB and SYRWCD, ID No. 1 also have demanded that the deponents produce for inspection and copying all documents related to the subject of their testimony.

On September 22, CalTrout submitted a Motion for Protective Order, Ex Parte Application for Order Shortening Time for Notice and Service of Motion for Protective Order, and Motion for Ex Parte Order Staying Depositions Pending Determination on Motion for Protective Order. CCRB and SYRWCD, ID No. 1 submitted an opposition to CalTrout's Motion for Protective Order on September 24. CalTrout submitted a reply to the opposition on September 25. CalTrout, CCRB, and SYRWCD, ID No. 1 have waived the right to a hearing on CalTrout's motions, provided that the SWRCB makes a determination on CalTrout's motions by September 26, 2003 at 10:00 a.m.

CalTrout's Ex Parte Application for Order Shortening Time for Notice and Service of Motion for Protective Order is granted. In this case, following the normal rule requiring a motion to be served and filed at least 21 days before a hearing on the motion would preclude a meaningful disposition of CalTrout's Motion for Protective Order.

CalTrout's Motion for Protective Order seeks an order directing that no depositions be taken or documents produced. In the alternative, CalTrout seeks an order directing that the depositions and document production be rescheduled to a date after the October 15, 2003 deadline for the parties to submit to the SWRCB and exchange exhibits, and at a time that will not interfere with CalTrout's participation in Phase 2 of the hearing.

For the reasons set forth below, CalTrout's Motion for Protective Order is granted. CCRB and SYRWCD, ID No. 1 are directed to reschedule the depositions and demands for document production to a date after October 15, 2003, if CCRB and SYRWCD, ID No. 1 determine that discovery remains necessary after reviewing CalTrout's exhibits. Because I am granting CalTrout's Motion for Protective Order, it is unnecessary to address CalTrout's Motion for Ex Parte Order Staying Depositions Pending Determination on Motion for Protective Order.

CCRB and SYRWCD, ID No. 1 seek to depose CalTrout's witnesses pursuant to Water Code section 1100. That section provides: "The board or any party to a proceeding before it may, in any investigation or hearing, cause the deposition of witnesses residing within or without the state to be taken in the manner prescribed by law for depositions in civil actions in the superior courts of this state under Article 3 (commencing with Section 2016) of Chapter 3 of Title 3 of Part 4 of the Code of Civil Procedure."

For good cause shown, a protective order that prohibits or limits depositions may be issued if required in the interests of justice "to protect any party, deponent, or other natural person or organization from unwarranted annoyance, embarrassment, or oppression, or undue burden and expense." (Cal. Code Civ. Proc., § 2025, subd. (i).) Similarly, a protective order may be issued if "[t]he discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive." (*Id.*, § 2019, subd. (b).) A protective order may, among other things, direct that a deposition not be taken at all,

direct that it be taken at a different time, limit the scope of the deposition or the conditions under which it may be taken, or direct that certain documents not be produced. (*Id.*, § 2025, subd. (i).)

As stated earlier, CCRB and SYRWCD, ID No. 1 seek to depose CalTrout's witnesses on the subject of their direct testimony, and to obtain documents that related to the subject of their testimony. It appears that CCRB and SYRWCD, ID No. 1 will obtain most if not all of the information that they seek when they are served with CalTrout's written testimony and exhibits on October 15. Accordingly, the discovery sought is obtainable from a more convenient, less burdensome, and less expensive source, and conducting discovery prior to October 15 would be unreasonably cumulative or duplicative.

CCRB and SYRWCD, ID No. 1 argue that discovery prior to October 15 is necessary to avoid surprise testimony. They argue that this is particularly important because of the short period of time between October 15 and the beginning of the hearing on October 21. In light of the order of appearances set forth above, however, CCRB and SYRWCD, ID No. 1 will have adequate time to prepare to cross-examine CalTrout's witnesses or to prepare rebuttal evidence using CalTrout's exhibits submitted on October 15. CalTrout will not present its case-in-chief any sooner than November 12, 2003. Thus, the hearing schedule will afford CCRB and SYRWCD, ID No. 1 approximately one month after receiving CalTrout's exhibits to prepare for cross-examination and rebuttal. Moreover, in the event that CalTrout's exhibits are insufficient to allow CCRB and SYRWCD, ID No. 1 to prepare adequately for cross-examination or rebuttal, I am not ruling out the possibility that CCRB and SYRWCD, ID No. 1 may conduct additional discovery after October 15, provided that any such discovery is not unduly burdensome or expensive to CalTrout.

CCRB and SYRWCD, ID No. 1 also assert that discovery is necessary in order to prepare their cases-in-chief. They do not explain, however, why learning the opinions of CalTrout's witnesses is necessary in order to prepare their cases-in-chief. It may be that CCRB and SYRWCD, ID No. 1 desire to respond in their cases-in-chief to CalTrout's direct testimony and supporting exhibits. CCRB and SYRWCD, ID No. 1 will have the opportunity, however, to present rebuttal evidence that is responsive to CalTrout's case-in-chief. As a general rule, parties should present evidence in their case-in-chief to the extent possible, as opposed to waiting and presenting evidence as rebuttal. In this case, however, the desirability of including evidence in CCRB's and SYRWCD, ID No. 1's cases-in-chief that anticipates CalTrout's case-in-chief is outweighed by the burden to CalTrout of complying with discovery requests in the last few weeks before CalTrout's exhibits are due.

For the foregoing reasons, CalTrout's Motion for Protective Order is granted. If after reviewing CalTrout's exhibits, CCRB and SYRWCD, ID No. 1 conclude that depositions are still necessary, they may reschedule the depositions. Any such discovery should avoid undue burden or expense to CalTrout, including unreasonable interference with CalTrout's ability to participate in Phase 2 of the hearing.

If you have any questions about this letter, please contact Dana Differding, Staff Counsel, at (916) 341-5188.

Sincerely,

/ s /

Peter S. Silva  
Hearing Officer

Enclosure

**Cachuma Project Hearing  
Phase-2 Hearing  
Final Service List**

**Updated 09/24/03**

**(Note: The parties whose E-mail addresses are listed below agreed to accept electronic service, pursuant to the rules specified in the hearing notice.)**

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