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7 STATE OF CALIFORNIA

8 STATE WATER RESOURCES CONTROL BOARD

9  
10 In the Matter of the Draft Cease and Desist )  
11 Order Against California American Water ) Request to Accommodate Robert Baiocchi  
12 Company For Its Unlawful Diversions From )  
13 The Carmel River )

14 **I. Introduction**

15 On May 16, 2008, the Board responded to Mr. Bob Baiocchi's request that he be allowed  
16 to participate by telephone in the hearing on the proposed cease and desist order regarding  
17 California American Water Company's illegal diversions from the Carmel River. The Board  
18 indicated that it was inclined to grant his request as to his testimony only. The Board also  
19 provided an opportunity for other participants to raise any objections that they might have.

20 The Public Trust Alliance objects to the exclusion of Mr. Baiocchi from a lead role in the  
21 presentation of California Salmon and Steelhead Association's case, which is closely aligned  
22 to the objectives of the Public Trust Alliance. The Public Trust Alliance respectfully  
23 requests that the Board comply with *Tennessee v. Lane*, 541 U.S. 509, 124 S.Ct. 1978 (2004),  
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1 which held that disabled persons have a fundamental right of access to the courts, and that  
2 State entities must provide such access through reasonable accommodations.

### 3 **II. Argument**

4 At the Pre-Hearing Conference on March 19, 2008, the Board suggested that the public-  
5 interest participants coordinate their efforts in order to maximize the effectiveness of their  
6 presentations and to avoid duplicative filings and demands on the time of the Board and  
7 parties. In accordance with that policy, the Public Trust Alliance is relying on the unique  
8 expertise of Mr. Baiocchi to testify and cross-examine parties regarding the public trust  
9 aspects of the Carmel River fishery decline.  
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11 Mr. Baiocchi is a pioneer of the modern public trust doctrine. In 1980, he participated in  
12 a landmark U.C. Davis forum defining the public trust doctrine. See Robert Baiocchi, *Use It*  
13 *or Lose It: California Fish and Game Code Section 5937 and Instream Fishery Resources*,  
14 14 U.C. Davis L. Rev. 431 (1980-81). Other participants in this forum included Joseph Sax,  
15 Harrison Dunning, Charles Wilkinson and Ralph W. Johnson, among others.<sup>1</sup> Mr. Baiocchi  
16 is a major expert in this field and is uniquely qualified to cross-examine the parties as well as  
17 to testify on behalf of the California Salmon and Steelhead Association. His full  
18 participation in the hearing is irreplaceable to the effort of presenting fully the case of the  
19 public-interest participants.  
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21 The Board's decision concerning Mr. Baiocchi's participation has important implications,  
22 both for the access of disabled persons to full participation in the legal process and for the  
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24 <sup>1</sup> See Harrison C. Dunning, *The Public Trust Doctrine in Natural Resources Law and Management: A Symposium:*  
25 *Foreword*, 14 U.C. DAVIS L. REV. 181 (1980-81); Joseph L. Sax, *Liberating the Public Trust Doctrine from Its*  
*Historical Shackles*, 14 U.C. DAVIS L. REV. 185 (1980-81); Ralph W. Johnson, *Public Trust Protection for Stream*  
*Flows and Lake Levels*, 14 U.C. DAVIS L. REV. 233 (1980-81); Charles F. Wilkinson, *The Public Trust Doctrine in*  
*Public Land Law*, 14 U.C. DAVIS L. REV. 269 (1980-81).

1 effectiveness and integrity of the fact-finding process. The Board will define the boundaries  
2 and mechanics of an important conversation and negotiation regarding public trust  
3 resources.

4 The Board invited public participation to better define and defend public interests. The  
5 proposed procedure diminishes the capacity of public advocates with specialized knowledge,  
6 experience and information to introduce and defend those interests. The scope of the hearing  
7 was broadened by public advocates to include interests held in trust for the California public,  
8 and defended by designated trustees with affirmative duties and responsibilities for  
9 continuing supervision. The California Salmon and Steelhead Association does not have a  
10 paid attorney. Bob Baiocchi is the person who can listen to proceedings and measure  
11 testimony against his experience and knowledge and formulate questions and objections.  
12 The proposed procedural limits on his participation would frustrate the presentation and  
13 public examination of relevant evidence.  
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15 Unless and until his participation can be shown to constitute an undue burden on the  
16 proceeding, it is public interests which are prejudiced. A greater burden is placed on other  
17 intervening organizations (such as the Public Trust Alliance) with limited resources for  
18 discovery and participation.  
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21 Respectfully submitted,

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23 Dated this May 22, 2008

24 Michael Warburton  
25 Patricia Nelson  
Public Trust Alliance