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## State Water Resources Control Board

July 14, 2017

### VIA ELECTRONIC MAIL

TO: ENCLOSED SERVICE LIST OF PARTICIPANTS

**SERVICE LIST OF PARTICIPANTS: Douglas and Heidi Cole and Marble Mountain Ranch - Hearing to determine whether to issue an order finding waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of water and ordering corrective actions**

Please find enclosed the Service List of Participants who have submitted a Notice of Intent to Appear (NOI) and who have indicated intent to participate in the above-referenced hearing. Copies of the NOIs are attached. The NOIs and other documents related to this hearing are posted on the Division of Water Rights's project-dedicated website:  
[http://www.waterboards.ca.gov/waterrights/water\\_issues/programs/hearings/marblemountain/index.shtml](http://www.waterboards.ca.gov/waterrights/water_issues/programs/hearings/marblemountain/index.shtml).

### **Reminder of Time Limits**

The enclosure to the June 9, 2017 [Notice of Public Hearing \(Notice\)](#), INFORMATION CONCERNING APPEARANCE AT WATER RIGHT HEARINGS, specified the following time limits for parties (see pp. 5-6):

- Opening Statements: 20 minutes.
- Direct Oral Testimony: 20 minutes per witness per party and cumulative limit of 1 hour for all of a party's direct testimony. As parties must submit all direct evidence in writing prior to the hearing, oral testimony serves to highlight or explain the key points in the evidence already submitted.<sup>1</sup>
- Cross-Examination: Initial limit of 1 hour per party per witness or witness panel.

### **Requests for Additional Time**

The hearing officers may, for good cause, approve a party's request for additional time to present direct testimony during the party's case-in-chief. For example, the hearing officers may allow additional time for the oral direct testimony of the witness if the witness is adverse to the party presenting the testimony and the hearing officers are satisfied that the party could not

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<sup>1</sup> The hearing officers may make an exception to this rule if the witness is adverse to the party presenting the testimony and is willing to testify only in response to a subpoena or alternative arrangement.

produce written direct testimony for the witness. The hearing officers also have discretion to allow additional time for cross-examination if there is good cause demonstrated in an offer of proof.

While several NOI's do not conform with the time limits specified in the Notice, these limits remain in force and effect. **Any party wishing to request additional time for direct oral testimony must submit such a request, including a showing of good cause, by noon on July 25, 2017**, the deadline for submittal of written testimony and exhibits.

### **Reminder of Witness Designation Requirements**

Parties should designate each of their witnesses as either experts or non-experts. Expert witness qualifications must be submitted by the exhibit deadline of noon on July 25, 2017.

### **Consolidation of Parties and Witness Panels**

The State Water Board encourages parties with common interests to work together to make the hearing process more efficient. We encourage parties to present consolidated or coordinated cases-in-chief to avoid redundancy, where appropriate. If a party presents multiple witnesses, the hearing officers may decide to have the party's witnesses cross-examined as a panel.

### **Requests for Postponement**

By letter dated July 11, 2017, Barbara Brenner, attorney for Douglas and Heidi Cole and Marble Mountain Ranch, submitted a request to the hearing officer for postponement of the August 22-25, 2017 hearing until December or later. By letter dated July 11, 2017 to the hearing officer, Kenneth Petruzzelli, on behalf of the Prosecution Team, responded in support of a postponement of the hearing until September but not later than early November. By letter dated July 12, 2017 to the hearing officer, Barbara Brenner reiterated her request for postponement of the hearing.

Hearing Officer Steven Moore is currently considering the requests for postponement of the hearing.

### **Ex Parte Communications**

I would like to remind the parties that *ex parte* communications with State Water Board members or staff that are not on the prosecution team are prohibited. Therefore, any communication concerning substantive or controversial procedural issues relevant to this hearing must be copied to all parties on the enclosed service list.

Questions regarding non-controversial procedural matters should be directed to Attorney Marianna Aue at (916) 327-4440, or by email to [Marianna.Aue@waterboards.ca.gov](mailto:Marianna.Aue@waterboards.ca.gov), or Mara Irby at (916) 322-6794, or by email at [Mara.Irby@waterboards.ca.gov](mailto:Mara.Irby@waterboards.ca.gov).

Sincerely,

*Mara Irby*

Mara Irby  
Environmental Scientist  
Hearings Unit

Enclosures: Service List of Participants  
Notices of Intent to Appear

**SERVICE LIST OF PARTICIPANTS**  
**Douglas and Heidi Cole and Marble Mountain Ranch**  
**Waste and Unreasonable Use Hearing**  
**Scheduled for August 22, 2017**

**PARTIES**

THE FOLLOWING **MUST BE SERVED** WITH WRITTEN TESTIMONY, EXHIBITS AND OTHER DOCUMENTS. (All have AGREED TO ACCEPT electronic service, pursuant to the rules specified in the hearing notice.)

<p><b>DIVISION OF WATER RIGHTS</b> Prosecution Team Ken Petruzzelli, Attorney III State Water Resources Control Board Office of Enforcement 801 K Street, 23<sup>rd</sup> Floor Sacramento CA 95814 <a href="mailto:kenneth.petruzzelli@waterboards.ca.gov">kenneth.petruzzelli@waterboards.ca.gov</a> <a href="mailto:heather.mapes@waterboards.ca.gov">heather.mapes@waterboards.ca.gov</a></p>	<p><b>DOUGLAS AND HEIDI COLE, MARBLE MOUNTAIN RANCH</b> Barbara A. Brenner 1414 K Street, 3<sup>rd</sup> Floor Sacramento, CA 95814 <a href="mailto:barbara@churchwellwhite.com">barbara@churchwellwhite.com</a> <a href="mailto:kerry@churchwellwhite.com">kerry@churchwellwhite.com</a></p>
<p><b>CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE</b> Stephen Puccini, Staff Counsel Nathan Voegeli, Staff Counsel 1416 Ninth St. Sacramento, CA 95814 <a href="mailto:stephen.puccini@wildlife.ca.gov">stephen.puccini@wildlife.ca.gov</a> <a href="mailto:nathan.voegeli@wildlife.ca.gov">nathan.voegeli@wildlife.ca.gov</a></p>	<p><b>CALIFORNIA SPORTFISHING PROTECTION ALLIANCE</b> Chris Shutes 1608 Francisco St. Berkeley, CA 94703 <a href="mailto:blancapaloma@msn.com">blancapaloma@msn.com</a></p> <p>Michael Jackson P.O. Box 207 75 Court Street Quincy, CA 95971 <a href="mailto:mjatty@sbcglobal.net">mjatty@sbcglobal.net</a></p>
<p><b>KLAMATH RIVERKEEPER</b> Paul Kibel 2140 Shattuck Ave., Suite 801 Berkeley, CA 94704-1229 <a href="mailto:pskibel@waterpowerlaw.com">pskibel@waterpowerlaw.com</a></p>	<p><b>KARUK TRIBE</b> Fatima Abbas, General Counsel 64236 Second Ave. Happy Camp, CA 96039 <a href="mailto:fabbas@karuk.us">fabbas@karuk.us</a></p>

**SERVICE LIST OF PARTICIPANTS**  
**Douglas and Heidi Cole and Marble Mountain Ranch**  
**Waste and Unreasonable Use Hearing**  
**Scheduled for August 22, 2017**

**PARTIES, CONT'D**

THE FOLLOWING **MUST BE SERVED** WITH WRITTEN TESTIMONY, EXHIBITS AND OTHER DOCUMENTS. (All have AGREED TO ACCEPT electronic service, pursuant to the rules specified in the hearing notice.)

<p><b>NATIONAL MARINE FISHERIES SERVICE</b> Christopher Keifer, Attorney NOAA Office of General Counsel, 501 W. Ocean Blvd., Suite 4480 Long Beach, CA 90802 <a href="mailto:christopher.keifer@noaa.gov">christopher.keifer@noaa.gov</a> <a href="mailto:margaret.tauzer@noaa.gov">margaret.tauzer@noaa.gov</a> <a href="mailto:justin.ly@noaa.gov">justin.ly@noaa.gov</a></p>	<p><b>OLD MAN RIVER TRUST</b> Konrad Fisher 100 Tomorrow Rd. Somes Bar, CA 95568 <a href="mailto:k@omrl.org">k@omrl.org</a></p>
<p><b>PACIFIC COAST FEDERATION OF FISHERMEN'S ASSOCIATIONS AND INSTITUTE FOR FISHERIES RESOURCES</b> Noah Oppenheim Regina Chichizola P.O. Box 29196 San Francisco, CA 94129-8196 <a href="mailto:regina@ifrfish.org">regina@ifrfish.org</a></p>	

**NOTICE OF INTENT TO APPEAR**

The Division of Water Rights Prosecution Team plans to participate in the water right hearing regarding (name of party or participant)

whether to issue an order finding waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of water and ordering corrective actions against

Douglas and Heidi Cole and Marble Mountain Ranch  
scheduled to commence

**Tuesday, August 22, 2017 at 10:00 a.m.**

and continue, if necessary, on

**August 23, 24, and 25, 2017**

**1) Check all that apply:**

- I/we intend to present a policy statement only.
- I/we intend to participate by cross-examination or rebuttal only.
- I/we decline electronic service of hearing-related materials.
- I/we plan to call the following witnesses to testify at the hearing.

<b>NAME</b>	<b>SUBJECT OF PROPOSED TESTIMONY</b>	<b>ESTIMATED LENGTH OF DIRECT TESTIMONY</b>	<b>EXPERT WITNESS (YES/NO)</b>
Taro Murano	Key Issue 1 and 2	20	Yes
Skyler Anderson	Key Issue 1 and 2	20	Yes
Marc Van Camp	Key Issue 1 and 2	5	Yes
Stormer Feiler	Key Issue 1 and 2	15	Yes
Joey Howard*	Key Issue 1 and 2	10	Yes
United States Forest Service – Person(s) Most Knowledgeable*	Key Issue 1 and 2	10	Yes
Rebuttal Witnesses TBD	The Prosecution Team will call rebuttal witnesses as necessary		

(If more space is required, please add additional pages or use reverse side.)

\* The Prosecution Team anticipates requiring additional time to present testimony from the United States Forest Service and from Mr. Joey Howard. As their testimony is important and relevant to the key issues, the Prosecution team requests additional time to present these witnesses.

**NOTICE OF INTENT TO APPEAR**

Douglas and Heidi Cole, Marble Mountain Ranch

plans to participate in the water right hearing regarding (name of party or participant)

whether to issue an order finding waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of water and ordering corrective actions against

Douglas and Heidi Cole and Marble Mountain Ranch scheduled to commence

**Tuesday, August 22, 2017 at 10:00 a.m.**

and continue, if necessary, on **August 23, 24, and 25, 2017**

**1) Check only one of the following:**

- I/we intend to present a policy statement only.
 I/we intend to participate by cross-examination or rebuttal only.
 I/we plan to call the following witnesses to testify at the hearing. (Fill in the table below.)

Table with 4 columns: Witness Name, Subject of Proposed Testimony, Estimated Length of Direct Testimony, Expert Witness (Yes/No). Row 1: Please see attached table for witness list.

(If more space is required, please add additional pages or use reverse side.)

**2) Fill in the following information of the Participant, Party, Attorney, or Other Representative:**

Name (Print): Barbara A. Brenner

Mailing Address: 1414 K Street, 3rd Floor Sacramento, CA 95814

Phone Number: (916) 468-0950 Fax Number: (916) 468-0951

E-mail: barbara@churchwellwhite.com

Optional: [ ] I/we decline electronic service of hearing-related materials.

Signature: [Handwritten Signature] Date: July 6, 2017

**NOTICE OF INTENT TO APPEAR**

Douglas and Heidi Cole and Marble Mountain Ranch  
scheduled to commence  
**Tuesday, August 22, 2017 at 10:00 a.m.**  
and continue, if necessary, on  
**August 23, 24, and 25, 2017**

<b>Witness Name</b>	<b>Subject of Proposed Testimony</b>	<b>Estimated Length of Direct Testimony</b>
Joey Howard	Current and historical diversion use	1 hour
Will Harling	Past diversion improvement efforts	1 hour
Rocco Fiori	Diversion operation and management	0.5 hours
Ben Waterson	Current compliance activities and costs	0.5 hours
Jeff Meyer	Current compliance activities and costs	1.0 hour
Steve Cramer	Fishery interests	1.0 hour
Douglas Cole	Diversion use, operation and management and costs of compliance	1.0 hour
Heidi Cole	Compliance costs, diversion use, operation and management	0.5 hours



**AMENDED  
NOTICE OF INTENT TO APPEAR**

Douglas and Heidi Cole, Marble Mountain

Ranch \_\_\_\_\_ plans to participate in the water right hearing regarding  
(name of party or participant)

whether to issue an order finding waste, unreasonable use, unreasonable method of use, or  
unreasonable method of diversion of water and ordering corrective actions against

Douglas and Heidi Cole and Marble Mountain Ranch  
scheduled to commence

**Tuesday, August 22, 2017 at 10:00 a.m.**

and continue, if necessary, on

**August 23, 24, and 25, 2017**

**1) Check only one of the following:**

- I/we intend to present a policy statement only.
- I/we intend to participate by cross-examination or rebuttal only.
- I/we plan to call the following witnesses to testify at the hearing. **(Fill in the table below.)**

Witness Name	Subject of Proposed Testimony	Estimated Length of Direct Testimony	Expert Witness (Yes/No)
Please see attached table for witness list			

(If more space is required, please add additional pages or use reverse side.)

**2) Fill in the following information of the Participant, Party, Attorney, or Other Representative:**

Name (Print): Barbara A. Brenner


Mailing Address: 1414 K Street, 3rd Floor

Sacramento, CA 95814

Phone Number: (916) 468-0950 Fax Number: (916) 468-0951

E-mail: barbara@churchwellwhite.com

Optional:  I/we decline electronic service of hearing-related materials.

Signature:  Date: 7/6/2017

**AMENDED  
NOTICE OF INTENT TO APPEAR**

Douglas and Heidi Cole and Marble Mountain Ranch  
scheduled to commence  
**Tuesday, August 22, 2017 at 10:00 a.m.**  
and continue, if necessary, on  
**August 23, 24, and 25, 2017**

<b>Witness Name</b>	<b>Subject of Proposed Testimony</b>	<b>Estimated Length of Direct Testimony</b>
Joey Howard	Current and historical diversion use	1 hour
Will Harling	Past diversion improvement efforts	1 hour
Rocco Fiori	Diversion operation and management	0.5 hours
Ben Waterson	Current compliance activities and costs	0.5 hours
Jeff Meyer	Current compliance activities and costs	1.0 hour
Steve Cramer	Fishery interests	1.0 hour
Douglas Cole	Diversion use, operation and management and costs of compliance	1.0 hour
Heidi Cole	Compliance costs, diversion use, operation and management	0.5 hours
Max Creasy	Maintenance and use of the diversion facility	0.4 hours

**NOTICE OF INTENT TO APPEAR**

*The California Department of Fish and Wildlife (CDFW)* plans to participate in the water right hearing regarding whether to issue an order finding waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of water and ordering corrective actions against

Douglas and Heidi Cole and Marble Mountain Ranch  
scheduled to commence

**Tuesday, August 22, 2017 at 10:00 a.m.**

and continue, if necessary, on

**August 23, 24, and 25, 2017**

**1) Check only one of the following:**

- I/we intend to present a policy statement only.
- I/we intend to participate by cross-examination or rebuttal only.
- I/we plan to call the following witnesses to testify at the hearing. (Fill in the table below.)

Witness Name	Subject of Proposed Testimony	Estimated Length of Direct Testimony	Expert Witness (Yes/No)
<i>Caitlin Bean</i>	<i>Hearing Notice Key Issues 1 and 2</i>	<i>15 minutes</i>	<i>No</i>
<i>Jennifer Bull</i>	<i>Hearing Notice Key Issues 1 and 2</i>	<i>15 minutes</i>	<i>No</i>
<i>Robert Holmes</i>	<i>Hearing Notice Key Issue 1</i>	<i>10 minutes</i>	<i>No</i>
<i>Michael Harris</i>	<i>Hearing Notice Key Issues 1 and 2</i>	<i>15 minutes</i>	<i>No</i>

(If more space is required, please add additional pages or use reverse side.)

**2) Fill in the following information of the Participant, Party, Attorney, or Other Representative:**

Name (Print): Stephen Puccini and Nathan Voegeli, Staff Counsels, CDFW

Mailing Address: 1416 Ninth Street, Sacramento, CA 95814

Phone Numbers: (916) 653-6590; (916) 651-7653 Fax Number: (916) 654-3805

E-mail: stephen.puccini@wildlife.ca.gov; nathan.voegeli@wildlife.ca.gov

Optional:  I/we decline electronic service of hearing-related materials.

Signature:  Date: 7/6/17

### NOTICE OF INTENT TO APPEAR

California Sportfishing Protection Alliance Plans to participate in the water right hearing regarding  
(name of party or participant)

whether to issue an order finding waste, unreasonable use, unreasonable method of use, or  
unreasonable method of diversion of water and ordering corrective actions against

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scheduled to commence  
**Tuesday, August 22, 2017 at 10:00 a.m.**  
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**August 23, 24, and 25, 2017**

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- I/we intend to present a policy statement only.
- I/we intend to participate by cross-examination or rebuttal only.
- I/we plan to call the following witnesses to testify at the hearing. (Fill in the table below.)

Witness Name	Subject of Proposed Testimony	Estimated Length of Direct Testimony	Expert Witness (Yes/No)

(If more space is required, please add additional pages or use reverse side.)

**2) Fill in the following information of the Participant, Party, Attorney, or Other Representative:**


Name (Print): Chris Shutes; Michael Jackson

Mailing Address: 1608 Francisco St., Berkeley, CA 94703; P.O. Box 207, 75 Court Street, Quincy, CA 95971

Phone Number: ( 510) 421-2405; (530) 283-1007 Fax Number: ( 530) 283-4999

E-mail: blancapaloma@msn.com; mjatty@sbcglobal.net

Optional:  I/we decline electronic service of hearing-related materials.

Signature:  Date : July 4, 2017

### NOTICE OF INTENT TO APPEAR

Klamath Riverkeeper plans to participate in the water right hearing regarding  
(name of party or participant)

whether to issue an order finding waste, unreasonable use, unreasonable method of use, or  
unreasonable method of diversion of water and ordering corrective actions against

Douglas and Heidi Cole and Marble Mountain Ranch  
scheduled to commence  
Tuesday, August 22, 2017 at 10:00 a.m.  
and continue, if necessary, on  
August 23, 24, and 25, 2017

**1) Check only one of the following:**

- I/we intend to present a policy statement only.
- I/we intend to participate by cross-examination or rebuttal only.
- I/we plan to call the following witnesses to testify at the hearing. (Fill in the table below.)

Witness Name	Subject of Proposed Testimony	Estimated Length of Direct Testimony	Expert Witness (Yes/No)
members of Klamath Riverkeeper	Harm from diversion	60 minutes	

(If more space is required, please add additional pages or use reverse side.)

**2) Fill in the following information of the Participant, Party, Attorney, or Other Representative:**

Name (Print): Paul Kibel

Mailing Address: 2140 Shattuck Ave, Ste 801  
Berkeley, CA 94704-1229

Phone Number: (510) 296-5588 Fax Number: ( )

E-mail: pskibel@waterpowerlaw.com

Optional:  I/we decline electronic service of hearing-related materials.

Signature: Paul Kibel Date: 7/6/17  
*H.F.*

### NOTICE OF INTENT TO APPEAR

Karuk Tribe plans to participate in the water right hearing regarding (name of party or participant)

whether to issue an order finding waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of water and ordering corrective actions against

Douglas and Heidi Cole and Marble Mountain Ranch  
scheduled to commence

**Tuesday, August 22, 2017 at 10:00 a.m.**  
and continue, if necessary, on  
**August 23, 24, and 25, 2017**

**1) Check only one of the following:**

- I/we intend to present a policy statement only.
- I/we intend to participate by cross-examination or rebuttal only.
- I/we plan to call the following witnesses to testify at the hearing. (Fill in the table below.)

Witness Name	Subject of Proposed Testimony	Estimated Length of Direct Testimony	Expert Witness (Yes/No)
Toz Soto	Key Issue I & II	20 Minutes	Y
Leaf Hillman	Karuk Tribe & Fisheries Restoration	20 minutes	Y

(If more space is required, please add additional pages or use reverse side.)

**2) Fill in the following information of the Participant, Party, Attorney, or Other Representative:**

Name (Print): Karuk Tribe, Chairman Russell Attebery C/O Fatima Abbas, Karuk General Counsel

Mailing Address: 64236 Second Avenue  
Happy Camp, CA 96039

Phone Number: (530) 643-1873 Fax Number: (530) 493-5322  
E-mail: fabbas@karuk.us

Optional:  I/we decline electronic service of hearing-related materials.

Signature:  Date: 7/6/17

### NOTICE OF INTENT TO APPEAR

National Marine Fisheries Service plans to participate in the water right hearing regarding  
(name of party or participant)

whether to issue an order finding waste, unreasonable use, unreasonable method of use, or  
unreasonable method of diversion of water and ordering corrective actions against

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scheduled to commence  
**Tuesday, August 22, 2017 at 10:00 a.m.**  
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**August 23, 24, and 25, 2017**

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- I/we intend to present a policy statement only.
- I/we intend to participate by cross-examination or rebuttal only.
- **I/we plan to call the following witnesses to testify at the hearing. (Fill in the table below.)**

Witness Name	Subject of Proposed Testimony	Estimated Length of Direct Testimony	Expert Witness (Yes/No)
Margaret Tauzer	Key Issues 1 & 2	45	Yes
Person Most Knowledgeable	Key Issues 1 & 2	15	Yes

(If more space is required, please add additional pages or use reverse side.)

**2) Fill in the following information of the Participant, Party, Attorney, or Other Representative:**

Name (Print): Christopher Keifer, Attorney

Mailing Address: NOAA Office of General Counsel, Suite 4480, 501 W. Ocean Blvd, Long Beach, CA 90802

Phone Number: (562) 980-4076 Fax Number: (562) 980-4018

E-mail: Christopher.keifer@noaa.gov, Margaret.tauzer@noaa.gov, Justin.ly@noaa.gov

Optional:  I/we decline electronic service of hearing-related materials.

Signature:  Date: 6 JUL 2017

**NOTICE OF INTENT TO APPEAR**

Old Man River Trust plans to participate in the water right hearing regarding  
(name of party or participant)

whether to issue an order finding waste, unreasonable use, unreasonable method of use, or  
unreasonable method of diversion of water and ordering corrective actions against

Douglas and Heidi Cole and Marble Mountain Ranch  
scheduled to commence  
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- I/we intend to participate by cross-examination or rebuttal only.
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Witness Name	Subject of Proposed Testimony	Estimated Length of Direct Testimony	Expert Witness (Yes/No)
see e-mail	Harm from diversion + physical solutions	60 minutes	

(If more space is required, please add additional pages or use reverse side.)

**2) Fill in the following information of the Participant, Party, Attorney, or Other Representative:**

Name (Print): Konrad Fisher

Mailing Address: 100 Tomorrow Rd  
Somes Bar CA 95568

Phone Number: (530) 921-9660 Fax Number: ( )

E-mail: k@omrl.org

Optional:  I/we decline electronic service of hearing-related materials.

Signature: Konrad Fisher Date: 7/6/17



**NOTICE OF INTENT TO APPEAR**  
*Pacific Coast Federation of Fishermen Association + Institute for Fisheries Resources*  
plans to participate in the water right hearing regarding  
(name of party or participant)

whether to issue an order finding waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of water and ordering corrective actions against

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- I/we intend to participate by cross-examination or rebuttal only.
- I/we plan to call the following witnesses to testify at the hearing. (Fill in the table below.)

Witness Name	Subject of Proposed Testimony	Estimated Length of Direct Testimony	Expert Witness (Yes/No)

(If more space is required, please add additional pages or use reverse side.)

2) Fill in the following information of the Participant, Party, Attorney, or Other Representative:

Name (Print): Noah Oppenheim or Regina Chichizole

Mailing Address: P.O. Box 29196 San Francisco CA 94129-0196

Phone Number: 415, 561 3474 Fax Number: 415, 561 5465

E-mail: regina@icfish.org

Optional:  I/we decline electronic service of hearing-related materials.

Signature: *Regina* Date: 7/6/17