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Secretary for
Environmental Protection

State Water Resources Control Board



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Executive Office

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April 10, 2007

To: Enclosed Service List

SANTA ANA RIVER HEARING: HEARING SCHEDULE UPDATE, SECOND PRE-HEARING CONFERENCE, AND PROCEDURAL MATTERS

The purpose of this letter is to address certain issues raised during the pre-hearing conference held on April 5, 2007, regarding the Santa Ana River water right hearing scheduled for May 2, 3, and 4, 2007. As noted during the pre-hearing conference, the hearing will continue, if necessary, at **9:00 am on May 7, 8, and 9, in the Sierra Hearing Room.**

A second pre-hearing conference is scheduled for **10:00 am on April 20, 2007**, to discuss the order of presentation of evidence. San Bernardino Valley Municipal Water District and Western Municipal Water District of Riverside County (Muni/Western) have agreed to circulate a draft order of presentation prior to the pre-hearing conference. Participation in the pre-hearing conference will be by telephone only. The call-in number for the pre-hearing conference is (916) 255-4398. The telephone line is limited to 30 people, so please contact hearing staff if you anticipate having more than one or two representatives participating.

The February 16, 2007, hearing notice includes Key Issues 4 and 5, which address injury to the prior rights of other legal users of water and the relative priority of right assigned to any permits that may be issued on the pending applications. The Santa Ana River applicants (Muni/Western, Orange County Water District, Chino Basin Watermaster, San Bernardino Valley Water Conservation District and the City of Riverside) have entered into a stipulation entitled "Stipulation of Applicants," dated April 5, 2007, to resolve these two key issues. They request the State Water Board to accept the resolution as a full resolution of Key Issues 4 and 5. As discussed during the pre-hearing conference, the State Water Board must receive any objections to the stipulation within seven days from the date of the stipulation—i.e., by 5:00 pm on April 12, 2007. Absent any objection to the stipulation, Key Issues 4 and 5 will be eliminated as issues on which the parties should present evidence. The stipulation, of course, does not affect the State Water Board's obligation to make independent findings based on the evidentiary record.

The State Water Board's hearing procedures do not require the filing of a protest as a prerequisite to participating in a hearing. Nonetheless, during the pre-hearing conference, the participants requested an opportunity to brief the issue as to what extent the Center for Biological Diversity's (Center) should be allowed to participate as a party. According to the Center's Notice of Intent to Appear, the Center intends to present a case-in-chief on the impacts of the applications on public trust resources. Certain applicants objected to the Center's presentation of evidence on the grounds that the Center had not protested their applications. The hearing participants are being given the opportunity to brief the issue of whether the Center

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may participate in the hearing (i.e., presenting a case-in-chief and conducting cross-examination) regardless of whether the Center is a protestant. The briefs should also address the issue of whether, if the Center is not allowed to participate as a party, the State Water Board should take any additional steps to ensure that the hearing record is adequate for the State Water Board to carry out its public trust responsibilities. The briefs must be received by the State Water Board by 5:00 pm on April 16, 2007.

The attachment to the February 16, 2007, hearing notice entitled "Information Concerning Appearance at Water Right Hearings" contains requirements for the submission of exhibits. Those requirements are revised or clarified for the Santa Ana River hearing as follows:

- The attachment initially required participants to submit either 7 hard copies or 6 hard copies and 1 electronic copy of their exhibits to the State Water Resources Control Board (State Water Board). This requirement is revised to allow the participants to submit **4 copies of witness testimony and 3 copies of technical information (e.g., environmental documents), plus 1 electronic copy.**
- A participant may introduce a summary of voluminous publicly available data or information (e.g., United States Geological Service gage data at a particular station), rather than the underlying actual data, as long as the participant provides a specific reference to where the data or information may be obtained in the public domain. The participant shall provide other participants with a copy of the data upon any such request.
- A participant may introduce a multimedia exhibit (e.g., an animated presentation) in electronic format only if it is infeasible or impracticable to produce a hard copy of the exhibit.

In addition, as a reminder, the attachment provides the following information about submission of voluminous documents. These requirements are unchanged:

A participant seeking to enter in evidence as an exhibit a voluminous document or database may so advise the other participants prior to the filing date for exhibits, and may ask them to respond if they wish to have a copy of the exhibit. If a participant waives the opportunity to obtain a copy of the exhibit, the participant sponsoring the exhibit will not be required to provide a copy to the waiving participant. Additionally, such exhibits may be submitted to the State Water Board in electronic form, using a file format readable by Microsoft Office 2000 software.

As discussed at the pre-hearing conference, I have granted the time limits requested by the participants for direct examination. Cross-examination will be limited to one hour, and additional time may be allowed if there is good cause demonstrated in an offer of proof.

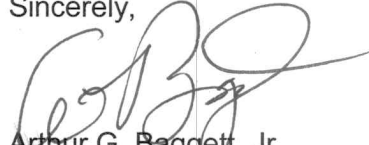
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If you have any questions, please contact Erin K.L. Mahaney, Senior Staff Counsel, at (916) 341-5187 or emahaney@waterboards.ca.gov, or Jane Farwell, Environmental Scientist, at (916) 341-5349 or jfarwell@waterboards.ca.gov.

Sincerely,



Arthur G. Baggett, Jr.
Board Member

Enclosure

SANTA ANA RIVER HEARING
May 2, 2007 HEARING
REVISED SERVICE LIST
(March 29, 2007)

PARTIES TO EXCHANGE INFORMATION

(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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