

May 11, 2011

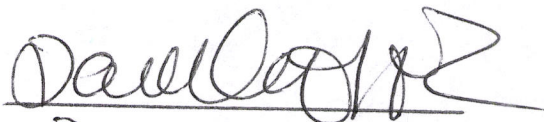
State Water Resources Board  
Division Water Board  
% Michael Buckman

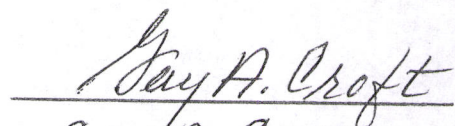
STATE WATER RESOURCES  
CONTROL BOARD  
2013 MAY 15 AM 10:51  
DIV OF WATER RIGHTS  
SACRAMENTO

Dear Sir

This letter is written confirmation of our phone conversation with Cartor Mejia and Yvonne West, on May 9, 2013, that we David W. Croft and Gay A. Croft Trustees of the Croft Family Trust, **DO NOT WANT** a hearing on July 24, 2013 or at any other time.

A check for \$1,000 is being sent under separate cover to Yvonne West per her dissection.

  
DAVID W. CROFT

  
GAY A. CROFT

Address of property:

4901 Little Mill Creek Rd.

Philo, California

95466





EDMUND G. BROWN JR.  
GOVERNOR

MATTHEW RODRIGUEZ  
SECRETARY FOR  
ENVIRONMENTAL PROTECTION

STATE WATER RESOURCES  
CONTROL BOARD  
2013 MAY 15 AM 10:51

DIV OF WATER RIGHTS  
SACRAMENTO

State Water Resources Control Board

## NOTICE OF PUBLIC HEARINGS AND MEETING OF THE STATE WATER RESOURCES CONTROL BOARD

The State Water Resources Control Board will hold two separate  
Public Hearings to determine whether to adopt Orders imposing

**Administrative Civil Liability for Failure to File  
Statements of Water Diversion and Use**  
upon

**David Burton**  
**Unnamed Stream Tributary to Bidwell Creek in Sonoma County**

**David Croft and the DW Croft and GA Croft Family Trust**  
**Unnamed Stream Tributary to Mill Creek in Mendocino County**

The State Water Resources Control Board will then convene a closed session and  
public meeting.

**The Public Hearings and Meeting of the State Water Resources Control Board**  
will be held on  
**Wednesday, July 24, 2013,**  
**at 9:00 a.m.**

in  
the Coastal Hearing Room  
Joe Serna, Jr.-Cal/EPA Building  
1001 I Street, Second Floor  
Sacramento, CA

### PURPOSE OF HEARINGS

The purpose of each hearing is for the State Water Resources Control Board (State Water Board or Board) to receive evidence relevant to determining whether to adopt orders imposing administrative civil liability and, if so, whether in the amount of \$1,000, or some other amount, upon: (1) David Burton; and (2) David Croft and the DW Croft and GA Croft Family Trust.

FELICIA MARCUS, CHAIR | THOMAS HOWARD, EXECUTIVE DIRECTOR

1001 I Street, Sacramento, CA 95814 | Mailing Address: P.O. Box 100, Sacramento, Ca 95812-0100 | [www.waterboards.ca.gov](http://www.waterboards.ca.gov)



## **ORDER OF PROCEEDINGS**

### **Hearings**

The State Water Board will first convene a hearing to receive evidence relevant to determining whether to adopt an order imposing administrative civil liability upon David Burton. The Board will then convene a hearing to receive evidence relevant to determining whether to adopt an order imposing administrative civil liability upon David Croft and the DW Croft and GA Croft Family Trust.

### **Closed Session**

Following the conclusion of the hearings, the State Water Board will adjourn to closed session to deliberate upon whether to adopt orders imposing administrative civil liability and, if so, whether in the amount of \$1,000, or some other amount, upon: (1) David Burton and (2) David Croft and the DW Croft and GA Croft Family Trust. This closed session is authorized by Government Code, section 11126, subdivision (c)(3).

### **Public Session**

The State Water Board will then reconvene in public session, at which time the Board may adopt orders imposing administrative civil liability in the amount of \$1,000, or some other amount, upon: (1) David Burton and (2) David Croft and the DW Croft and GA Croft Family Trust. There will be an opportunity for members of the public to address the Board on these matters prior to its consideration of any action.

## **BACKGROUND**

The State Water Board may impose administrative civil liability for failure to file a required Statement(s) of Water Diversion and Use (Statement). (Wat. Code, § 5107, subd. (c)(1).) Following the issuance of an administrative civil liability complaint and any necessary hearing, the Board may impose administrative civil liability of up to \$1,000 for failure to file a Statement. (Wat. Code, §§ 1055; 5107, subd. (c)(1).) The Board may impose an additional administrative civil liability of \$500 per day for each day on which the violation continues, if the person fails to file a Statement within 30 days after the Board has called the violation to the attention of that person. (Wat. Code, § 5107, subd. (c)(1).)

The State Water Board may impose administrative civil liability only after notice and an opportunity for hearing. This notice and other material related to each of the ACL hearings will be posted at the following project web sites:

[http://www.waterboards.ca.gov/waterrights/water\\_issues/programs/hearings/burton/index.shtml](http://www.waterboards.ca.gov/waterrights/water_issues/programs/hearings/burton/index.shtml)

[http://www.waterboards.ca.gov/waterrights/water\\_issues/programs/hearings/croft/index.shtml](http://www.waterboards.ca.gov/waterrights/water_issues/programs/hearings/croft/index.shtml)

### **David Burton**

On April 11, 2012, the Assistant Deputy Director for Water Rights issued an [administrative civil liability](#) complaint against David Burton (Mr. Burton), for his alleged failure to file a Statement with the Division of Water Rights (Division) by July 1, 2010, as required by Water Code, sections 5101-5103. By letter dated May 3, 2012, Mr. Burton requested a hearing.



### David Croft and DW Croft and GA Croft Family Trust

On April 10, 2012, the Assistant Deputy Director for Water Rights issued an [administrative civil liability complaint](#) against David Croft (Mr. Croft) and the DW Croft and GA Croft Family Trust (Croft Trust), for their alleged failure to file a Statement with the Division by July 1, 2010, as required by Water Code, sections 5101-5103. By letter dated April 23, 2012, Mr. Croft requested a hearing.

### KEY ISSUE

Each public hearing presents the following key issues:

Should the State Water Board adopt an order imposing administrative civil liability? If so, in what amount should the Board impose administrative civil liability and on what basis should it do so?

### HEARING OFFICER AND HEARING TEAM

State Water Board Chair Felicia Marcus will preside over these proceedings. A quorum of the Board will be present. State Water Board staff hearing team members will include Carlos Mejia, Staff Counsel; Jean McCue, Water Resource Control Engineer and Kathleen Groody, Environmental Scientist. The hearing team will assist the members of the State Water Board throughout these proceedings.

### SEPARATION OF FUNCTIONS

A staff prosecution team will be a party in these hearings. State Water Board prosecution team members will include Yvonne West, Senior Staff Counsel and John O'Hagan, Senior Water Resource Control Engineer.

The prosecution team is separated from the hearing team and is prohibited from having *ex parte* communications with the members of the State Water Board and members of the hearing team regarding substantive issues and controversial procedural issues within the scope of these proceedings. This separation of functions also applies to the supervisors of each team.

### HEARING PARTICIPATION

IF YOU WANT TO TAKE PART IN ANY OF THE EVIDENTIARY HEARINGS, you should carefully read the enclosure entitled "Information Concerning Appearance at Water Right Hearings at Board Meetings." As stated in that enclosure, each party wishing to present evidence at any of the hearings must submit a **Notice of Intent to Appear**, which must be received by the State Water Board no later than the deadline listed below. **If David Burton fails to submit a Notice of Intent to Appear by the deadline specified in this notice, the Board will deem his request for a hearing regarding the imposition of administrative civil liability to be withdrawn, and administrative civil liability may be imposed without further notice. If David Croft and the DW Croft and GA Croft Family trust fail to submit a Notice of Intent to Appear by the deadline specified in this notice, the Board will deem their request for a hearing regarding the imposition of administrative civil liability to be withdrawn, and administrative civil liability may be imposed without further notice.**



Within one week after the deadline for filing Notices of Intent to Appear, the State Water Board will mail out a list of those who wish to participate in each hearing and a copy of all Notices of Intent to Appear that the Board timely received. The list is provided in order to facilitate exchange of written testimony, exhibits and witness qualifications in advance of the hearing. Only parties and other participants who are authorized by the Board will be allowed to present evidence. Copies of witnesses' proposed **testimony, exhibits, lists of exhibits, statements of qualifications of expert witnesses, and a statement of service** must be **received** by the State Water Board and served on each of the parties who have indicated their intent to appear, no later than the deadline listed below.

**12 Noon, Wednesday May 22, 2013**      Deadline for receipt of Notice of Intent to Appear.

**12 Noon, Wednesday, June 19, 2013**      Deadline for receipt and service of witnesses' proposed testimony, exhibits, lists of exhibits, statements of qualifications of expert witnesses, and statement of service.

### **SUBMITTALS TO THE WATER BOARD**

Notices of Intent to Appear, written testimony, and other exhibits submitted to the State Water Board should be addressed as follows:

Division of Water Rights, Hearing Unit  
State Water Resources Control Board

Attention: Kathleen Groody  
P.O. Box 2000, Sacramento, CA 95812-2000 (by mail)  
1001 I Street, 2<sup>nd</sup> Floor, Sacramento, CA 95814 (by hand delivery)  
Phone: (916) 341-5354; Fax: (916) 341-5400

Email: [wrhearing@waterboards.ca.gov](mailto:wrhearing@waterboards.ca.gov)

With Subject of "**David Burton**";  
or "**David Croft and the DW Croft and GA Croft Family Trust**".

**ALL HAND DELIVERED SUBMITTALS** should be Date and Time stamped by the Division of Water Rights' Records Unit on the second (2nd) floor of the Joe Serna, Jr. Cal/EPA Building at the above address prior to or at the submittal deadline. Persons delivering submittals must first check in with lobby security personnel on the first floor. Hand delivered submittals that do not have a timely Date and Time stamp by the Division of Water Rights' Records Unit will be considered late and may not be accepted by the State Water Board.



**IF YOU HAVE ANY QUESTIONS**

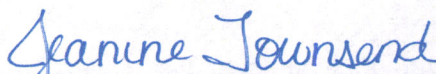
During the pendency of these proceedings, and commencing no later than the issuance of this notice, there shall be no *ex parte* communications between State Water Board members or State Water Board hearing team staff and any of the other parties or participants, including members of the prosecution team, regarding substantive or controversial procedural matters within the scope of the proceeding. (Gov. Code, §§ 11430.10-11430.80.) Questions regarding non-controversial procedural matters (Gov. Code, § 11430.20, subd. (b)) should be directed to either Environmental Scientist Kathleen Groody at (916) 341-5354 (email: [kgroody@waterboards.ca.gov](mailto:kgroody@waterboards.ca.gov)) or to Staff Counsel Carlos Mejia at (916) 341-5184 (email: [carlos.mejia@waterboards.ca.gov](mailto:carlos.mejia@waterboards.ca.gov)).

**PARKING, ACCESSIBILITY AND SECURITY**

A map to the Joe Serna Jr./Cal-EPA Building and parking information are available at <http://www.calepa.ca.gov/EPABldg/location.htm>. The Cal/EPA Building is accessible to people with disabilities. Individuals who require special accommodations at the Cal/EPA Building are requested to contact Michele Villados, Office of Employee Assistance, at (916) 341-5881. Due to enhanced security precautions at the Cal/EPA Building, all visitors are required to register with security staff prior to attending any meeting. To sign in and receive a visitor's badge, visitors must go to the Visitor and Environmental Services Center, located just inside and to the left of the building's public entrance. Depending on their destination and the building's security level, visitors may be asked to show valid picture identification. Valid picture identification can take the form of a current driver's license, military identification card, or state or federal identification card. Depending on the size and number of meetings scheduled on any given day, the security check-in could take up to fifteen minutes. Please allow adequate time to sign in before being directed to the hearing.

May 2, 2013

Date



Jeanine Townsend  
Clerk to the Board

Enclosures



**INFORMATION CONCERNING APPEARANCE AT  
WATER RIGHT HEARINGS**

The following procedural requirements will apply and will be strictly enforced:

- 1. HEARING PROCEDURES GENERALLY:** The hearings will be conducted in accordance with the procedures for hearings set forth at California Code of Regulations, title 23, sections 648-648.8, 649.6 and 760, as they currently exist or may be amended. A copy of the current regulations and the underlying statutes governing adjudicative proceedings before the State Water Board is available upon request or may be viewed at the State Water Board's web site: [http://www.waterboards.ca.gov/laws\\_regulations](http://www.waterboards.ca.gov/laws_regulations).

Unless otherwise determined by the State Water Board, each party may make an opening statement, call and examine witnesses, introduce exhibits, cross-examine opposing witnesses on any matter relevant to the issues even if that matter was not covered in the direct examination, impeach any witness, rebut adverse evidence, and subpoena, call and examine an adverse party or witness as if under cross-examination. At the discretion of the Board, parties may also be afforded the opportunity to present closing statements or submit briefs. The Board encourages parties with common interests to work together to make the hearing process more efficient. The Board reserves the right to issue further rulings clarifying or limiting the rights of any party where authorized under applicable statutes and regulations.

Parties must file any requests for exceptions to procedural requirements in writing with the State Water Board and must serve such requests on the other parties. To provide time for parties to respond, the Board will rule on procedural requests filed in writing no sooner than fifteen days after receiving the request, unless an earlier ruling is necessary to avoid disrupting the hearing.

- 2. SETTLEMENTS:** In water right enforcement hearings, a State Water Board staff member or team prosecutes an alleged violation. In such enforcement cases, the prosecution and a party who is the subject of the proposed enforcement action may at their discretion engage in private settlement discussions, or may include any other persons in those discussions. Although other persons may be authorized to participate in the hearing as parties, such a designation does not constitute a ruling that those persons must be allowed to engage in any settlement discussions between the prosecution and the party against whom the agency action is directed. The consent of other parties is not required before the State Water Board, or the Executive Director under State Water Board [Resolution No. 2012-0061](#), can approve a proposed settlement agreement between the prosecution and a party subject to a proposed enforcement action. However, all parties will be given the opportunity to comment on any settlement submitted to the State Water Board or the Executive Director for approval.
- 3. PARTIES:** The current parties in the **hearing** concerning David Burton are **David Burton and the State Water Board Prosecution Team**. The current parties in the **hearing** concerning David Croft and the DW Croft and GA Croft Family Trust are **David Croft and the DW Croft and GA Croft Family Trust and the State Water Board Prosecution Team**. Additional parties may be designated in accordance with the procedures for this hearing. Except as may be decided by specific rulings of the State Water Board, any person or entity who timely files a Notice of Intent to Appear indicating the desire to participate beyond presenting a policy statement shall be designated as a party. The Board may impose



limitations on a party's participation. (Gov. Code, § 11440.50, subd. (c).) Persons or entities who do not file a timely Notice of Intent to Appear may be designated as parties at the Board's discretion, for good cause shown, and subject to appropriate conditions as determined by the Board. Except as specifically provided in this notice or by the Board's ruling, only parties will be allowed to present evidence.

4. **INTERESTED PERSONS:** Pursuant to California Code of Regulations, title 23, section 648.1, subdivision (d), the State Water Board will provide an opportunity for presentation of non-evidentiary policy statements or comments by interested persons who are not designated as parties. A person or entity that appears and presents only a policy statement is not a party and will not be allowed to make objections, offer evidence, conduct cross-examination, make legal argument or otherwise participate in the evidentiary hearing. Interested persons will not be added to the service list and will not receive copies of written testimony or exhibits from the parties, but may access hearing documents at the website listed in the hearing notice.

Policy statements are subject to the following provisions in addition to the requirements outlined in regulation. (Cal. Code Regs., tit. 23, § 648.1, subd. (d).)

- a. Policy statements are not subject to the pre-hearing requirements for testimony or exhibits, except that interested persons are requested to file a Notice of Intent to Appear, indicating clearly an intent to make a policy statement only.
  - b. The State Water Board requests that policy statements be provided in writing before they are presented. Please see section 7, for details regarding electronic submittal of policy statements.
5. **NOTICE OF INTENT TO APPEAR:** Persons and entities who seek to participate as parties in this hearing must file either an electronic copy or a paper copy of a Notice of Intent to Appear, which must be **received** by the State Water Board no later than **the deadline prescribed in the Hearing Notice**. Failure to submit a Notice of Intent to Appear in a timely manner may be interpreted by the State Water Board as intent not to appear. If the party requesting the hearing fails to file a timely Notice of Intent to Appear, this may be deemed a withdrawal of the request for hearing. Any faxed or emailed Notices of Intent to Appear must be followed by a mailed or delivered hard copy with an original signature.

Interested persons who will not be participating as parties, but instead presenting only non-evidentiary policy statements should also file a Notice of Intent to Appear.

The Notice of Intent to Appear must state the name and address of the participant. Except for interested persons who will not be participating as parties, the Notice of Intent to Appear must also include: (1) the name of each witness who will testify on the party's behalf; (2) a brief description of each witness' proposed testimony; and (3) an estimate of the time (subject to the total time limit for oral testimony described in section 9, below) that the witness will need to present a brief oral summary of his or her prior-submitted written testimony. (See section 6, below.) Parties who do not intend to present a case-in-chief but wish to cross-examine witnesses or present rebuttal should so indicate on the Notice of Intent to Appear.<sup>1</sup> Parties who decide not to present a case-in-chief after having submitted a

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<sup>1</sup> A party is not required to present evidence as part of a case-in-chief. Parties not presenting evidence as part of a case-in-chief will be allowed to participate through opening statements, cross-examination, and rebuttal, and may also present closing statements or briefs, if the State Water Board allows these in the hearing.



Notice of Intent to Appear should notify the State Water Board and the other parties as soon as possible.

Parties who are not willing to accept electronic service of hearing documents should check the appropriate box on the Notice of Intent to Appear. (See section 7, below.)

The State Water Board will mail a service list of parties to each person who has submitted a Notice of Intent to Appear. The service list will indicate if any party is unwilling to accept electronic service. If there is any change in the hearing schedule, only those parties on the service list, and interested persons that have filed a Notice of Intent to Appear expressing their intent to present a policy statement only, will be informed of the change.

- 6. WRITTEN TESTIMONY AND OTHER EXHIBITS:** Exhibits include written testimony, statements of qualifications of expert witnesses, and other documents to be used as evidence. Each party proposing to present testimony on factual or other evidentiary matters at the hearing shall submit such testimony in writing.<sup>2</sup> Written testimony shall be designated as an exhibit, and must be submitted with the other exhibits. Oral testimony that goes beyond the scope of the written testimony may be excluded. A party who proposes to offer expert testimony must submit an exhibit containing a statement of the expert witness's qualifications.

Each party shall submit to the State Water Board ten (10) paper copies and one electronic copy of each of its exhibits. With its exhibits, each party must submit a completed Exhibit Identification Index. Each party shall also serve a copy of each exhibit and the exhibit index on every party on the service list. A statement of service with manner of service indicated shall be filed with each party's exhibits.

The exhibits and indexes for this hearing, and a statement of service, must be **received by the State Water Board and served on the other parties no later than the deadline prescribed in the Hearing Notice**. The State Water Board may interpret failure to timely submit such documents as a waiver of party status.

All hearing documents that are timely received will be posted on the hearings program webpage identified in the hearing notice.

The following requirements apply to exhibits:

- a. Exhibits based on technical studies or models shall be accompanied by sufficient information to clearly identify and explain the logic, assumptions, development, and operation of the studies or models.
- b. The State Water Board has discretion to receive in evidence by reference relevant, otherwise admissible, public records of the State Water Board and documents or other evidence that have been prepared and published by a public agency, provided that the original or a copy was in the possession of the State Water Board before the notice of the hearing is issued. (Cal. Code Regs., tit. 23, § 648.3.) A participant offering an exhibit by reference shall advise the other participants and the State Water Board of the titles of the documents, the particular portions, including page and paragraph numbers, on which the participant relies, the nature of the contents, the purpose for

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<sup>2</sup> The State Water Board 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.



which the exhibit will be used when offered in evidence, and the specific file folder or other exact location in the State Water Board's files where the document may be found.

- c. A party 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 2003 software.
  - d. Exhibits that rely on unpublished technical documents will be excluded unless the unpublished technical documents are admitted as exhibits.
  - e. Parties submitting large format exhibits such as maps, charts, and other graphics shall provide the original for the hearing record in a form that can be folded to 8 ½ x 11 inches. Alternatively, participants may supply, for the hearing record, a reduced copy of a large format original if it is readable.
7. **ELECTRONIC SUBMISSIONS:** To expedite the exchange of information, reduce paper use, and lower the cost of participating in the hearing, participants are encouraged to submit hearing documents to the State Water Board in electronic form and parties are encouraged to agree to electronic service.

Any documents submitted or served electronically must be in Adobe™ Portable Document Format (PDF), except for Exhibit Identification Indexes, which may be in a version supported by Microsoft Excel or Word. Electronic submittals to the State Water Board of documents less than 11 megabytes in total size (incoming mail server attachment limitation) may be sent via electronic mail to: [wrhearing@waterboards.ca.gov](mailto:wrhearing@waterboards.ca.gov) with a subject of "Burton Hearing" or "Croft Hearing" Electronic submittals to the State Water Board of documents greater than 11 megabytes in total size should be sent by regular mail in PDF format on compact disk (CD™) media. Each electronically submitted exhibit must be saved as a separate PDF file with the file name in lower case lettering.

8. **PRE-HEARING CONFERENCE:** At the State Water Board's discretion, a pre-hearing conference may be conducted before the proceeding to discuss the scope of the hearing, the status of any protests, and any other appropriate procedural issues.
9. **ORDER OF PROCEEDING:** The State Water Board will follow the Order of Proceedings specified in California Code of Regulations, title 23, section 648.5. Participants should take note of the following additional information regarding the major hearing events. The time limits specified below may be changed by the State Water Board, for good cause.
- a. **Policy Statements Within the Evidentiary Hearing:** Policy statements will be heard at the start of the hearing, before the presentation of cases-in-chief. Oral summaries of the policy statements will be limited to five minutes or such other time as established by the State Water Board.
  - b. **Presentation of Cases-In-Chief:** Each party who so indicates on a Notice of Intent to Appear may present a case-in-chief addressing the key issues identified in the hearing notice. The case-in-chief will consist of any opening statement, oral testimony, introduction of exhibits, and cross-examination of the party's witnesses. The State



Water Board may allow redirect examination and recross examination. The Board will decide whether to accept the party's exhibits into evidence upon a motion of the party after completion of the case-in-chief.

- i. **Opening Statements:** At the beginning of a case-in-chief, the party or the party's attorney may make an opening statement briefly and concisely stating the objectives of the case-in-chief, the major points that the proposed evidence is intended to establish, and the relationship between the major points and the key issues. Oral opening statements will be limited to five (5) minutes per party. A party may submit a written opening statement before the hearing or during the hearing, prior to their case-in-chief. Any policy-oriented statements by a party should be included in the opening statement.
  - ii. **Oral Testimony:** All witnesses presenting testimony shall appear at the hearing. Before testifying, witnesses shall swear or affirm that the written and oral testimony they will present is true and correct. Written testimony shall not be read into the record. Written testimony affirmed by the witness is direct testimony. Each party will be allowed up to **ten (10) minutes total** to present all of its direct testimony.<sup>3</sup>
  - iii. **Cross-Examination:** Cross-examination of a witness will be permitted on the party's written submittals, the witness' oral testimony, and other relevant matters not covered in the direct testimony. (Gov. Code, § 11513, subd. (b).) If a party presents multiple witnesses, the State Water Board will decide whether the party's witnesses will be cross-examined as a panel. Cross-examiners initially will be limited to ten (10) minutes total for all witnesses. The Board has discretion to allow additional time for cross-examination if there is good cause demonstrated in an offer of proof. Ordinarily, only a party or the party's representative will be permitted to examine a witness, but the Board may allow a party to designate a person technically qualified in the subject being considered to examine a witness.
  - iv. **Redirect and Recross Examination:** Redirect examination may be allowed at the State Water Board's discretion. Any redirect examination and recross examination permitted will be limited to the scope of the cross-examination and the redirect examination, respectively. The Board may establish time limits for any permitted redirect and recross examination.
  - v. **Questions by State Water Board and Staff:** State Water Board members and staff may ask questions at any time and may cross-examine any witness.
- c. **Rebuttal:** After all parties have presented their cases-in-chief and their witnesses have been cross-examined, the State Water Board will allow parties to present rebuttal evidence. Rebuttal evidence is new evidence used to rebut evidence presented by another party. Each party will initially be limited to five minutes for the presentation of rebuttal evidence. The Board has discretion to allow additional time for the presentation of rebuttal evidence, if there is good cause demonstrated.

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<sup>3</sup> The State Water Board may, for good cause, approve a party's request for additional time to present direct testimony during the party's case-in-chief. The Board 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 Board is satisfied that the party could not produce written direct testimony for the witness.



Rebuttal testimony and exhibits need not be submitted prior to the hearing, although the Board may require submittal of rebuttal testimony and exhibits before they are presented in order to improve hearing efficiency. Rebuttal evidence is limited to evidence that is responsive to evidence presented in connection with another party's case-in-chief, and it does not include evidence that should have been presented during the case-in-chief of the party submitting rebuttal evidence. It also does not include repetitive evidence. Cross-examination of rebuttal evidence will be limited to the scope of the rebuttal evidence.

- d. **Closing Statements and Legal Arguments:** At the close of the hearing or at other times, if appropriate, the State Water Board may allow oral closing statements or legal arguments or set a schedule for filing legal briefs or written closing statements. If the Board allows oral closing statements or legal arguments, each party will initially be limited to five (5) minutes. The Board has discretion to allow additional time for oral closing statements or legal arguments, if there is good cause demonstrated. If the Board authorizes the parties to file briefs, five copies of each brief shall be submitted to the Board, and one copy shall be served on each of the other participants on the service list. A party shall not attach a document of an evidentiary nature to a brief unless the document is already in the evidentiary hearing record or is the subject of an offer into evidence made at the hearing.

**10. EX PARTE CONTACTS:** During the pendency of this proceeding, commencing no later than the issuance of the Notice of Hearing, there shall be no *ex parte* communications with State Water Board members or State Water Board hearing team staff and supervisors, regarding substantive or controversial procedural issues within the scope of the proceeding. (Gov. Code, §§ 11430.10-11430.80.) **Any communications regarding potentially substantive or controversial procedural matters, including but not limited to evidence, briefs, and motions, must demonstrate that all parties were served and the manner of service.** Parties may accomplish this by submitting a proof of service or by other verification, such as correct addresses in an electronic-mail carbon copy list, or a list of the parties copied and addresses in the carbon copy portion of a letter. Communications regarding non-controversial procedural matters are permissible and should be directed to staff on the hearing team, not State Water Board members. (Gov. Code, § 11430.20, subd. (b).) A document regarding *ex parte* communications entitled "Ex Parte Questions and Answers" is available upon request or from our website at: [http://www.waterboards.ca.gov/laws\\_regulations/docs/exparte.pdf](http://www.waterboards.ca.gov/laws_regulations/docs/exparte.pdf).

**11. RULES OF EVIDENCE:** Evidence will be admitted in accordance with Government Code, section 11513. Hearsay evidence may be used to supplement or explain other evidence, but over timely objection shall not be sufficient in itself to support a finding unless it would be admissible over objection in a civil action.



**NOTICE OF INTENT TO APPEAR**

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

**Proposed Administrative Civil Liability Order Hearing**

Check one of the following: \_\_\_\_\_ David Burton  
 \_\_\_\_\_ David Croft and the DW Croft and GA Croft Family Trust  
 scheduled to commence

July 24, 2013

**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 to accept electronic service of hearing-related materials.
- I/we plan to call the following witnesses to testify at the hearing.

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.)

Name, Address, Phone Number and Fax Number of Attorney or Other Representative:

Signature: \_\_\_\_\_ Dated: \_\_\_\_\_

Name (Print): \_\_\_\_\_

Mailing Address: \_\_\_\_\_

\_\_\_\_\_

Phone Number: ( ) \_\_\_\_\_ Fax Number: ( ) \_\_\_\_\_

E-mail: \_\_\_\_\_



