



State Water Resources Control Board



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Secretary for
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Division of Water Rights
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Arnold Schwarzenegger
Governor

NOTICE OF PETITION FOR MODIFICATION OF WATER RIGHT PERMITS 15026, 15027 AND 15030 (APPLICATIONS 5632, 15204 AND 15574)

PETITIONER: Yuba County Water Agency

PETITION FILED: April 27, 2007

STREAM SYSTEM: Yuba River tributary to Feather River

COUNTY: Yuba

Notice is hereby given that Yuba County Water Agency (YCWA) has petitioned the State Water Resources Control Board (State Water Board) to modify Water Right Permits 15026, 15027 and 15030 (Applications 5632, 15204 and 15574, respectively) by making specific changes to the State Water Board's Revised Water Right Decision 1644 ([RD-1644](#)).¹

The State Water Board will determine whether to issue an order approving the petition for modification and, if so, whether to condition the approval in order to protect the environment, the public interest and/or downstream water users. This notice and other related documents may be viewed and printed at the following Division of Water Rights websites: <http://www.waterrights.ca.gov/application/PetNot.htm> and <http://www.waterrights.ca.gov/HTML/loweryubariver.html>.

BACKGROUND

The Decision

On July 16, 2003, the State Water Board adopted RD-1644, which placed conditions on YCWA's water rights for consumptive use under Water Right Permits 15026, 15027, and 15030, in order to address fishery protection and water right issues involving the diversion and use of water from the Yuba River. To protect fish in the lower Yuba River between Englebright Dam and Marysville, the decision established two sets of minimum instream flow requirements: (1) interim flow requirements that have been in effect since the original adoption of Decision 1644 in 2001 and (2) long-term flow requirements. The long-term flow requirements were originally scheduled to become effective on April 21, 2006. However, YCWA petitioned for and received temporary approval that allowed the

¹ YCWA's Petition for Modification of Water Right Permits was filed pursuant to California Code of Regulations, title 23, § 791(e).

interim flow schedule to remain in effect for a longer period. The long-term flows are now scheduled to come into effect on April 1, 2008.²

The interim and long-term flow requirements established in RD-1644 vary depending upon the time of year and the hydrologic conditions in a particular year,³ but the long-term flow requirements are higher than the interim requirements during parts of some years. Due to the relative abundance of water in the Yuba River in wet and above normal years, the interim and long-term flow requirements for wet and above normal water year types are identical. In below normal years, the interim and long-term flow requirements are similar. In dry, critical and extreme critical years, however, the differences between the interim and long-term flow requirements are more substantial.

RD-1644 expressly recognizes that the instream flow provisions and other requirements established in the decision are subject to the continuing authority of the State Water Board and may be modified for a number of reasons, including changed circumstances, new information, and public trust protection.

Pending Litigation

Following adoption of RD-1644, YCWA, several other water purveyors in Yuba County, and several environmental groups filed petitions challenging the decision in Yuba County Superior Court. Among other contentions in the litigation, YCWA and the other water purveyors argue that some of the flow requirements specified in RD-1644 are unsupported and excessive, while the environmental groups contend that the decision provides insufficient protection for fish. The lawsuits have been consolidated and assigned to the San Joaquin County Superior Court, but the litigation is still in a preliminary stage, and no action has been taken with respect to substantive issues.

Proposed Yuba River Accord

With the exception of the State Water Board, the parties to the consolidated litigation over RD-1644 conducted extended settlement negotiations to attempt to develop a comprehensive proposal that would meet the litigants' competing needs regarding use of water from the Yuba River.⁴ On April 21, 2005, YCWA, several Yuba River water

² See [ORDER 2006-0009](#) and [ORDER 2007-0002-DWR](#) - Orders Changing the Effective Date of the Long-Term Instream Flow Requirements Established in Revised Water Right Decision 1644 (Permits 15026, 15027, and 15030; Applications 5632, 15204, and 15574) - Yuba County Water Agency, Petitioner and Permittee - Yuba River tributary to Feather River in Yuba County

³ The interim and long-term flow requirements both vary depending on the water year classification of a particular year. Both sets of requirements specify minimum flows to be provided in wet, above normal, below normal, dry, and critical water years, as determined using the Yuba River Index described in Appendix I of RD-1644. In addition, the long-term flow requirements include separate flow requirements for years that are classified as "extreme critical."

⁴ The State Water Board was not involved in the negotiations among the parties regarding development of specific settlement proposals because we may not pre-judge the decision whether to approve or disapprove changes to RD-1644 that could affect other water users or the public trust. However, State Water Board staff have discussed the procedural requirements that would have to be followed to implement various aspects of the settlement proposal.

purveyors, the Department of Water Resources (DWR), the U.S. Bureau of Reclamation (USBR), the California Department of Fish and Game (DFG), and several environmental organizations approved principles of agreement for a proposed settlement regarding instream flow requirements and other issues related to diversion and use of water from the lower Yuba River.

The proposed Lower Yuba River Accord ([Yuba Accord](#)) includes three separate but related [agreements](#): (1) the Fisheries Agreement,⁵ (2) the Water Purchase Agreement,⁶ and (3) the Conjunctive Use Agreement.⁷ The Yuba Accord proposes to modify the instream flow requirements established by RD-1644. In addition to complying with the modified RD-1644 instream flow requirements, the Yuba Accord proposes that YCWA provide additional water to meet instream needs pursuant to the terms of the Fisheries Agreement negotiated among YCWA, state and federal fishery agencies, and several non-profit organizations. The proposed Yuba Accord instream flows are meant to provide a level of protection for fish, wildlife, and other instream beneficial uses that would be equivalent to or better than the protection that would be provided by the long-term instream flow requirements in RD-1644.

Pilot Transfer Programs

On November 18, 2005, YCWA filed its first petition to postpone the effective date of the long-term flow requirements established in RD-1644 to March 1, 2007, and thereby allow YCWA to continue operating subject to the interim flow requirements until that date. The petition was filed to facilitate YCWA's implementation of a Pilot Transfer Program in 2006 (2006 Pilot Program). Following notice to the public and interested parties, the State Water Board held a hearing on YCWA's petition on January 10, 2006. On April 5, 2006, the State Water Board adopted Order WR 2006-0009, which delayed the effective date of the long-term flow requirements established in RD-1644 until March 1, 2007.

On August 23, 2006, YCWA filed a second petition to change the effective date of the long-term instream flow requirements specified in RD-1644 from March 1, 2007 to April 1, 2008, and thereby allow YCWA to continue operating subject to the interim flow requirements until that date. The petition was filed to facilitate YCWA's implementation of a 2007 Pilot Program, similar to the 2006 Pilot Program previously approved in Order

⁵ The Fisheries Agreement for the proposed Yuba Accord would be signed by YCWA, DFG, Friends of the River, the South Yuba River Citizens League, the Bay Institute, and Trout Unlimited. The National Marine Fisheries Service (NMFS), and the U.S. Fish and Wildlife Service (USFWS) will not be signatories but have signed a statement of support for the Fisheries Agreement.

⁶ The Water Purchase Agreement for the proposed Yuba Accord would be signed by DWR, YCWA, and the USBR.

⁷ The Conjunctive Use Agreement for the proposed Yuba Accord would be signed by YCWA and most of the water districts and water companies that receive water supplied by YCWA. However, Cordua Irrigation District has not agreed to sign the Conjunctive Use Agreement.

WR 2006-0009. No protests were filed against the petition following notice to the public and interested parties. On February 1, 2007, the State Water Board adopted Order 2007-0002-DWR, which delayed the effective date of the long-term flow requirements established in RD-1644 until April 1, 2008.

For the 2006 and 2007 Pilot Programs, YCWA has operated its facilities both to comply with the RD-1644 interim flow requirements currently in effect, and to provide the minimum instream flows that are specified in Exhibits 1 through 5 of the proposed Yuba Accord Fisheries Agreement.

SUBSTANCE OF PETITION FOR MODIFICATION

YCWA has petitioned the State Water Board to modify Water Right Permits 15026, 15027 and 15030 (Applications 5632, 15204 and 15574) by making the following specific changes to the State Water Board's RD-1644:⁸

1. Revisions to paragraph 1 on pages 173-176 of RD-1644
2. Deletion of paragraphs 2, 3 and 10 on pages 176-179 and 181-183 of RD 1644
3. Revisions to Appendix 1 of RD-1644

YCWA also requests that the State Water Board adopt an order that finds that implementing the above specific changes and the proposed Yuba Accord Fisheries Agreement will provide a level of protection for fisheries resources in the Lower Yuba River during the term of the Yuba Accord Fisheries Agreement that is equivalent to or better than that which RD-1644 provides.

YCWA requests the above changes to implement the proposed Yuba Accord. Implementation of the proposed Yuba Accord would require the State Water Board to modify the conditions on YCWA's water rights and to approve YCWA's petition for long-term transfer of water.⁹

ENVIRONMENTAL INFORMATION

YCWA and the U.S. Bureau of Reclamation (USBR) are serving as lead agencies for preparation of a joint Environmental Impact Report/Environmental Impact Statement (EIR/EIS) on the proposed Yuba Accord pursuant to requirements of the California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA).

⁸ A hard copy of the petition is available upon request. An electronic copy of the petition can be viewed at: <http://www.waterrights.ca.gov/application/PetNot.htm> and <http://www.waterrights.ca.gov/HTML/loweryubariver.html>.

⁹ On April 27, 2007, YCWA filed a separate petition for a long-term transfer of water under Water Code § 1735. The petition requests State Water Board's approval of a long-term transfer of up to 200,000 acre-feet annually of stored water from New Bullards Bar Reservoir from January 1, 2001 to December 31, 2025.

YCWA and USBR have prepared a Draft Environmental Impact Report/ Environmental Impact Statement (DEIR/DEIS), which was made available for public review on June 25, 2007. A copy of the DEIR/DEIS is posted on the USBR website: http://www.usbr.gov/mp/nepa/nepa_proidetails.cfm?Project_ID=2549

If you do not wish to file a protest, but would like to provide us with information regarding the Yuba Accord's potential significant effects on water resources that the DEIR/DEIS does not address, please send this information immediately to:

Jane Farwell
State Water Board, Division of Water Rights
P.O. Box 2000
Sacramento, CA 95812-2000.

We also recommend that you submit this information to the lead agencies, as described in the DEIR/DEIS. We will include this information in our review of the DEIR/DEIS as a responsible agency under CEQA.

PROTEST SUBMITTAL INFORMATION

Protest Requirements

A person may file a protest against approval of the petition with the State Water Board. The protest may be based on any appropriate grounds consistent with the water code, including:

- Injury to any legal user of water.
- Adverse environmental impact.
- Not in the public interest.
- Contrary to law.
- Not within the jurisdiction of the State Water Board.

All protests must clearly describe the objections to approval of the petition, and the factual basis for those objections. For example, if the objection is based on injury to a legal water user, the protest must describe the specific injury to the user that would result from approval of the changes proposed by the petition. In addition, the party claiming injury must provide specific information that describes the basis of the use, the date the use began, the quantity of water use, the purpose of use, and the place of use. Protests based on environmental impacts, public interest, legality, or jurisdictional issues must be accompanied by a statement of facts supporting the basis of the protest. If sufficient information is not submitted, the State Water Board may reject the protest or request that the protestant submit additional information. Protests should be project-specific. Simply requesting information or a study, without identifying the underlying value or concern the protection of which additional information could resolve, does not

constitute a valid protest. The Division will not accept protests that are directed against the underlying water right, rather than the changes proposed by the petition.

A protest should also contain a description of measures that could result in withdrawal of the protest.

Procedure for Submitting Protests

Any protest must comply with article 9 of the California Code of Regulations, title 23, commencing with section 745. Standard protest submittal forms are available from the State Water Board's Division of Water Rights or from the Division of Water Rights website at <http://www.waterrights.ca.gov/forms/pro-pet.pdf>. A pamphlet that provides additional information relating to water rights and the procedure for filing protests is also available on the website or by mail.

Protests must be submitted in writing by post, fax, electronic mail or hand delivery to:

Mail:

State Water Resources Control Board, Division of Water Rights
P.O. Box 2000
Sacramento, CA 95812-2000

FAX: (916) 341-5400

E-mail: emona@waterboards.ca.gov

Hand Delivery:

State Water Resources Control Board, Division of Water Rights
1001 "I" Street, 14th Floor
Sacramento, CA 94812

If you choose to fax or e-mail the protest, timely delivery of an original signed copy to the Division (either by hand or by mail) must follow in order for the protest to be accepted.

Additionally, a protestant must provide the petitioner, YCWA, with notice of the protest, by sending a copy of the protest to both:

Curt Aikens, General Manager
Yuba County Water Agency
1402 D Street
Marysville, CA 95901
Fax: 530-741-6541
e-mail: caikens@ycwa.com

Alan B. Lilly
Bartkiewicz, Kronick & Shanahan, P.C.
1011 22nd Street
Sacramento, CA 95816
Fax: 916-446-4018
e-mail: abl@bkslawfirm.com

Protest Submittal Deadline

Protests submitted in response to this notice **must be received by the Division by 4:00 p.m. on July 30, 2007** (the 30th day after the date of this notice), the close of the protest period.

Protests not submitted by the close of the protest period will be subject to rejection.

For good cause, the State Water Board may grant an extension of time to file a protest. It is the protestant's responsibility to contact the engineer listed below as "Contact Person" to request the extension prior to the end of the protest period.

RESOLUTION OF PROTESTS

The protestant and the applicant must make a good faith effort to resolve the protest through settlement negotiations. If the State Water Board receives protests that are not resolved in settlement, the State Water Board intends to conduct a hearing on the petition. A public Notice of Hearing would be issued at a later date. All protestants would be provided with a copy of the Notice of Public Hearing.

CONTACT PERSON

To obtain additional information regarding this petition, or to obtain copies of protest forms or general information pamphlets, please contact Ernest Mona by phone at (916) 341-5359 or by electronic mail at emona@waterboards.ca.gov. Information and protest forms are also available at the Division's website: www.waterrights.ca.gov/forms/.

Date of Notice: June 29, 2007