



Linda S. Adams
Secretary for
Environmental Protection

State Water Resources Control Board

Executive Office

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Arnold Schwarzenegger
Governor

September 25, 2009

To: Enclosed Service List

PETITIONS TO REVISE THE DECLARATION OF FULLY APPROPRIATED STREAM SYSTEM OF THE KERN RIVER IN KERN AND TULARE COUNTIES

On August 24, 2009, the State Water Resources Control Board (State Water Board or Board) issued a Notice of Public Hearing for whether to revise the status of the Kern River on the Declaration of Fully Appropriated Stream Systems (Declaration) pursuant to California Code of Regulation, title 23, section 871. On September 24, 2009, the State Water Board held a pre-hearing conference to discuss procedural issues regarding the hearing. This letter addresses the procedural issues that were raised during the September 24, 2009, pre-hearing conference.

The primary concern of the parties was the scope of evidence that will be considered in this proceeding. As expressed in the Notice of Public Hearing, the purpose of this proceeding is to determine whether there has been a change in circumstances since the Kern River was included in the Declaration, sufficient to justify the State Water Board revising the Declaration for the purpose of accepting and processing water right applications for the Kern River. To this end, and to avoid undue burdens on the parties and the State Water Board Hearing Team, evidence and testimony should be limited to whether additional information, based on court decisions or Board orders, or hydrologic data showing periods of flows exceeding recognized rights, has become available since the Board listed the Kern River as fully appropriated to justify the Board revising the Declaration.

Several parties raised the issue of the extent to which instream flows and public trust matters would be addressed in this hearing. Based on the key issues identified in the Notice of Public Hearing, public trust issues do not appear to be relevant to this particular proceeding. As specified in the Notice of Public Hearing, no determination regarding approval of the pending applications for appropriation of water will be made until after the State Water Board makes a determination on whether the stream system is fully appropriated. When the Board later takes action on the applications to appropriate water it will fully address any instream flow and public trust issues. As such, those issues are not relevant to this proceeding.

A question was also asked regarding whether the State Water Board will accept evidence pertaining to contractual disputes over water in the Kern River. To the extent that contractual disputes are relevant to whether, based on Board orders, court decisions, or hydrologic data, additional information has become available since the Board listed the Kern River as fully appropriated to justify the Board revising the Declaration, then such evidence may be considered. Testimony and evidence not related to adjudicated or otherwise recognized rights to divert and use water from the Kern River will be excluded as irrelevant.

California Environmental Protection Agency

As expressed at the pre-hearing conference, the North Kern Water Storage District, City of Shafter, Buena Vista Water Storage District, Kern Water Bank Authority and Kern County Water Agency¹ (North Kern Petitioners) have agreed to consolidate testimony and file most exhibits jointly. The North Kern Petitioners have likewise agreed to conduct direct and cross-examination of witnesses jointly. Each participant may give a separate opening statement and closing statement.

I will impose the following time limits on the parties' presentations:

Policy Statements – as set forth in the hearing notice, policy statements are limited to 5 minutes each;

Opening Statements – as discussed at the pre-hearing conference, opening statements are limited to 5 minutes per participant;

Direct Testimony – as requested at the pre-hearing conference, for oral summaries of direct testimony, the North Kern Petitioners and the City of Bakersfield will be allowed 20 minutes per witness, not to exceed 90 minutes total; and,

Closing Statements – as discussed at the pre-hearing conference, oral closing statements are limited to 5 minutes per participant. I will decide at the close of the hearing whether to allow written closing briefs.

Opening statements and cases-in-chief will be presented in the following order:

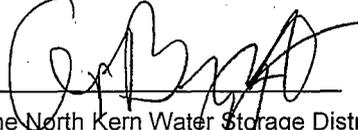
City of Bakersfield
North Kern Petitioners
Center for Biological Diversity²

As explained at the pre-hearing conference, the deadline for submission of written testimony and evidence is moved to Monday, October 19, 2009, at 12 noon. The date for the hearing has not changed.

Sincerely,

Arthur G. Baggett, Jr.
Board Member

Attachment: Service List



¹ The North Kern Water Storage District and City of Shafter filed a petition to revise the Declaration together but filed separate Notices of Intent to Appear for this proceeding.

² The Center for Biological Diversity's case-in-chief, as requested, will consist of an opening statement and closing statement, and possibly cross-examination of the other parties' witnesses.

cc: **[via U.S. Mail and email]**

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PROOF OF SERVICE

I, Sheri Denson, declare that I am over 18 years of age and not a party to the within action. I am employed in Sacramento County at 1001 I Street, 22nd Floor, Sacramento, California 95814. My mailing address is P. O. Box 100, Sacramento, CA 95812-0100. On this date, I served the within documents:

PETITIONS TO REVISE THE DECLARATION OF FULLY APPROPRIATED STREAM SYSTEM OF THE KERN RIVER IN KERN AND TULARE COUNTIES

	BY FACSIMILE: I caused a true and correct copy of the document to be transmitted by a facsimile machine compliant with rule 2003 of the California Rules of Court to the offices of the addresses at the telephone numbers shown on the service list.
	BY ELECTRONIC MAIL: I caused a true and correct copy of the document(s) to be transmitted by electronic mail compliant with section 1010.6 of the California Code of Civil Procedure to the person(s) as shown.
	BY HAND DELIVERY: I caused a true and correct copy of the document(s) to be hand-delivered to the person(s) as shown.
x	BY OVERNIGHT MAIL TO ALL PARTIES LISTED: I am readily familiar with my employer's practice for the collection and processing of overnight mail packages. Under that practice, packages would be deposited with an overnight mail carrier that same day, with overnight delivery charges thereon fully prepaid, in the ordinary course of business.
	BY FIRST CLASS MAIL TO PARTIES NOT RECEIVING EMAIL: I am readily familiar with my employer's practice for the collection and processing of mail. Under that practice, envelopes would be deposited with the U.S. Postal Service that same day, with first class postage thereon fully prepaid, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after the date of deposit for mailing shown in this proof of service.

By placing a true copy thereof in first class mail and/or electronic mail addressed to:

cc: [via U.S. Mail and email]

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I certify and declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this document was executed on September 25, 2009 at Sacramento, California.



Sheri Denson
Senior Legal Typist