



Linda S. Adams
Secretary for
Environmental Protection

State Water Resources Control Board

Division of Water Rights

1001 I Street, 14th Floor ♦ Sacramento, California 95814 ♦ 916.341.5300
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Arnold Schwarzenegger
Governor

NOTICE OF PETITION REQUESTING CHANGE IN THE EFFECTIVE DATE OF THE LONG-TERM INSTREAM FLOW REQUIREMENTS ESTABLISHED IN REVISED DECISION 1644

AND

NOTICE OF PUBLIC HEARING

The State Water Resources Control Board will hold a Hearing
to Consider a Petition by Yuba County Water Agency to Change the Effective Date of the
Long-Term Instream Flow Requirements Established in Revised Decision 1644
Involving
Water Right Permits 15026, 15027 and 15030 (Applications 5632, 15204 and 15574) of
Yuba County Water Agency
Affecting the Lower Yuba River in Yuba County

Commencing at 10:00 a.m. on December 11, 2006, and continuing,
if necessary, on December 12, 2006

at

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

SUBJECT OF PETITION

Notice is hereby given that on August 23, 2006, Yuba County Water Agency (YCWA) filed a petition to change the effective date of the long-term instream flow requirements specified in State Water Resources Control Board (State Water Board) Revised Decision 1644 (RD-1644) from March 1, 2007 to April 1, 2008.¹ The long-term flow requirements referred to in the petition were established as conditions of YCWA's water right Permits 15026, 15027 and 15030 (Applications 5632, 15204 and 15574) by RD-1644 adopted on July 16, 2003.² State Water Board Order WR 2006-0009, adopted on April 5, 2006, changed the effective date of the long-term flow requirements established in RD-1644 to March 1, 2007. Prior to March 1, 2007, RD-1644 and Order WR 2006-0009 require YCWA to operate to maintain specified interim instream flow requirements in the lower Yuba River. (RD-1644, pages 173-176; Order WR 2006-0009, page 15.) If the State Water Board changes the effective date of the long-term flow requirements as requested by the petition, then the interim instream flow requirements which are presently in effect will remain in effect until April 1, 2008.

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

² RD-1644 was modified by State Water Board Order WR 2006-0009, adopted on April 5, 2006.

California Environmental Protection Agency

PURPOSE OF HEARING

The purpose of this hearing is for the State Water Board to receive evidence relevant to determining whether to defer the effective date of the long-term flow requirements established in RD-1644 and Order WR 2006-0009 as requested in the petition. The hearing will provide an opportunity for the petitioner, interested parties, and any protestants to the petition to introduce evidence relevant to the State Water Board's consideration of the petition.

BACKGROUND

The State Water Board has addressed issues regarding instream flows in the lower Yuba River and other competing uses of water from the Yuba River watershed in a variety of proceedings over the last 16 years. On July 16, 2003, the State Water Board adopted Revised Decision 1644 (RD-1644), which adopted instream flow requirements for protection of fishery resources in the lower Yuba River between Englebright Dam and Marysville.³ RD-1644 established interim instream flow requirements as a condition of YCWA's water right permits for diversion of water from the Yuba River for consumptive uses. The interim flow requirements applied until April 21, 2006, at which time the long-term instream flow requirements specified in RD-1644 were scheduled to become effective. Although the interim and the long-term flow requirements both vary depending upon the time of the year and the water-year type classification of a particular year, the long-term flow requirements are often higher than the interim requirements.

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. The lawsuits were consolidated and assigned to the San Joaquin County Superior Court, but no action was taken with respect to the substantive issues raised in the lawsuits. With the exception of the State Water Board, the parties to the consolidated litigation engaged in extended settlement negotiations in an attempt to develop a comprehensive proposal that would accommodate the parties' competing interests with respect to uses of water from the Yuba River watershed.

On April 21, 2005, YCWA, in cooperation with other local, State, and federal governmental agencies and several environmental organizations, approved agreements for a proposed settlement regarding instream flow requirements on the lower Yuba River. The proposed Lower Yuba River Accord (Yuba Accord) includes three separate but related agreements: (1) a Fisheries Agreement, (2) a Water Purchase Agreement, and (3) a Conjunctive Use Agreement. The Yuba Accord is intended to form a framework to resolve the lengthy conflicts over minimum instream flows in the lower Yuba River. The Yuba Accord proposes to modify the instream flow requirements established by RD-1644 and also proposes that YCWA will provide additional water to meet instream needs pursuant to terms of the proposed Fisheries Agreement negotiated among YCWA, State and federal fishery agencies, and specified environmental groups.

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). By the end of 2006, YCWA intends to file petitions with the State Water Board to revise the instream flow requirements

³ RD-1644 was adopted in response to an order from the Yuba County Superior Court to reconsider the issues addressed in Water Right Decision 1644, which the State Water Board had previously adopted on March 1, 2001.

established in RD-1644 and to approve a long-term transfer of water to the Department of Water Resources (DWR) and the USBR as proposed in the Yuba Accord. The State Water Board will not act upon those petitions until completion of the EIR/EIS, which is not expected until the fall of 2007.

On November 16, 2005, YCWA filed a petition to change the effective date of the long-term instream flow requirements specified in State Water Board RD-1644 from April 21, 2006 to March 1, 2007. YCWA filed the petition to facilitate the implementation of a Pilot Transfer Program in 2006 (2006 Pilot Program).⁴ The Petition requested that the State Water Board defer the effective date of the long-term flow requirements established in RD-1644 in order to facilitate the 2006 Pilot Program. The goals for the 2006 Pilot Program included the following:

- To implement the Yuba Accord flow schedules from March 1, 2006 through February 28, 2007.
- To make a temporary water transfer in 2006 to produce revenue to help pay for the Yuba Accord EIR/EIS and fisheries studies.
- To begin evaluation of the Yuba Accord flows and provide funding for a River Management Fund.
- To begin the evaluation of accounting rules developed for the Yuba Accord Water Purchase Agreement.
- To commence the River Management Team process, a collaborative body made up of signatories to the Yuba Accord.

The State Water Board held an evidentiary hearing on the change petition on January 10, 2006, and adopted an order that extended the interim flows until March 1, 2007 (Order WR 2006-0009). The Division of Water Rights subsequently issued Order WR 2006-0010-DWR on April 10, 2006, which approved a temporary transfer of up to 125,000 acre-feet of water from YCWA to DWR, with the transfer to occur between April 10, 2006 and February 28, 2007. Approval of the 2006 temporary transfer allowed YCWA to operate in a manner similar to the proposed Yuba Accord during the period in which the draft EIR/EIS is being prepared for the program proposed in the Yuba Accord. Although extensive work has since been done on the draft EIR/EIS, that document is not complete and the State Water Board cannot yet evaluate the petitions to be filed for a long-term transfer of water and for revision of the long-term flow requirements established in RD-1644. Therefore, while work continues on the draft EIR/EIS, on August 23, 2006, YCWA submitted a petition to again defer the effective date of the long-term flow requirements established in RD-1644, and a petition for a temporary transfer of water to occur from April 1, 2007 through December 31, 2007.

⁴ On November 16, 2005, YCWA filed a separate petition for a temporary transfer of water under Water Code §§ 1725-1732. The petition requested the State Water Board approval of a 2006 water transfer to DWR for use in the CALFED Environmental Water Account and for possible use in DWR's 2006 Dry Year Water Purchase Program. On April 10, 2006, the Chief of the Division of Water Rights issued an order approving a temporary transfer of water from YCWA to DWR for use in the Environmental Water Account (Order WR 2006-0010-DWR).

YCWA's current petition to change the effective date of RD-1644 long-term requirements from March 1, 2007 to April 1, 2008 states that the change is required in order to accomplish a proposed temporary water transfer in 2007.⁵ The petition also states that, without the change in the effective date of the long-term flow requirements, the carryover storage in New Bullards Bar Reservoir after September 30, 2007, and after the implementation of the proposed temporary transfer of water, would be up to 70,000 acre-feet lower than it would be with the change. The petition states that reduced carryover storage would increase the severity of deficiencies in the amount of water available for delivery to local water users in 2008, if 2008 is a dry year.

If the petition to change the effective date of the RD-1644's long-term flow requirements is approved, YCWA proposes to operate its facilities to comply with the interim flow requirements currently in effect, and to provide the minimum instream flows that are specified in Exhibits 1 through 5 of the proposed Fisheries Agreement for the 2007 Lower Yuba River Pilot Program. YCWA's petition states that its proposed instream flows will provide a level of protection for fish, wildlife, and other instream beneficial uses that will be equivalent to or better than the protection that would be provided by the long-term instream flow requirements in RD-1644.

KEY ISSUES

1. Would approval of the petition to change the effective date of the long-term instream flow requirements established in RD-1644 result in injury to any legal user of water?
2. Would approval of the petition to change the effective date of the long-term instream flow requirements established in RD-1644 unreasonably affect fish, wildlife or other instream beneficial uses?
3. Would the public interest be served by changing the effective date of the long-term flow requirements established in RD-1644 as requested in the petition?
4. To what extent were the goals of the Yuba River Accord 2006 Pilot Program met?
5. Should the State Water Board approve the petition to change the effective date of the long-term flow requirements established in RD-1644 to April 1, 2008 as requested by YCWA? If the effective date of the long-term flow requirements is changed, what conditions should be included in the State Water Board order regarding the petition?

ENVIRONMENTAL INFORMATION

YCWA is lead agency under the CEQA and will prepare environmental documents to support its petition. The Petitioner has informed the State Water Board that it intends to file a public draft of an Initial Study/Negative Declaration with the State Clearinghouse by November 2006.

PROTEST AND HEARING PARTICIPATION

IF YOU WISH TO PROTEST the petitioned request, you may submit a protest in accordance with the provisions of California Code of Regulations, Title 23, Division 3, Chapter 2, Article 9, commencing with section 745. Standard forms on which to submit protests may be obtained

⁵ On August 23, 2006, YCWA filed a separate petition for a temporary transfer of water under Water Code §§ 1725-1732. The petition requests State Water Board approval of a 2007 water transfer to DWR for use in the CALFED Environmental Water Account and for possible use in DWR's 2007 Dry Year Water Purchase Program.

from the State Water Board's Division of Water Rights or downloaded from the Division of Water Rights website at <http://www.waterrights.ca.gov/forms/pro-pet.pdf>. Protests must be submitted in writing with a duplicate copy to Petitioner, YCWA, and must be **received** by the State Water Board no later than **noon on Monday, October 23, 2006**. **Any correspondence directed to the petitioner should be mailed to:**

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

The State Water Board intends to conduct a hearing on the petition beginning on December 11, 2006, to address the key issues specified above and to receive evidence relevant to any unresolved protests. If you intend to participate in the hearing, you must submit a **Notice of Intent to Appear** indicating your intent to appear to present evidence in support of your protest, and you must comply with the other instructions below for those who wish to take part in the hearing.

IF YOU WANT TO TAKE PART IN THIS HEARING, you should carefully read the enclosure entitled "Information Concerning Appearance at Water Right Hearings." As stated in that enclosure, all parties intending to present evidence at the hearing must submit a **Notice of Intent to Appear**, which must be **received** by the State Water Board no later than **noon on Monday, October 23, 2006**. In order to facilitate exchange of written testimony, exhibits and witness qualifications in advance of the hearing, on or about **Wednesday, October 25, 2006**, the State Water Board will mail out a list of those parties who have indicated an intent to participate in the hearing and a copy of all Notices of Intent to Appear that were timely received by the State Water Board. Copies of witnesses' proposed testimony, exhibits, lists of exhibits, and qualifications 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 **noon on Friday, November 17, 2006**.

PARKING, ACCESSIBILITY, AND SECURITY

The enclosed maps show the location of the Joe Serna Jr./Cal-EPA Building and public parking sites in Sacramento. The Joe Serna Jr./Cal-EPA Building Byron Sher Auditorium is accessible to people with disabilities.

Due to enhanced security precautions at the Cal-EPA Headquarters 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 from three to fifteen minutes. Please allow adequate time to sign in before being directed to the hearing.

IF YOU HAVE ANY QUESTIONS

The hearing team consists of the Board members and the staff assisting the Board members with the hearing. State Water Board Members Art Baggett and Charlie Hoppin will preside as hearing officers over this proceeding. Other Board Members may be present during the hearing. State Water Board staff hearing team members will include Senior Staff Counsel Dan Frink, Water Resources Control Engineers Greg Wilson and Ernest Mona, and Environmental Scientist Christy Spector. The hearing staff will assist the hearing officers and other members of the State Water Board during the hearing.

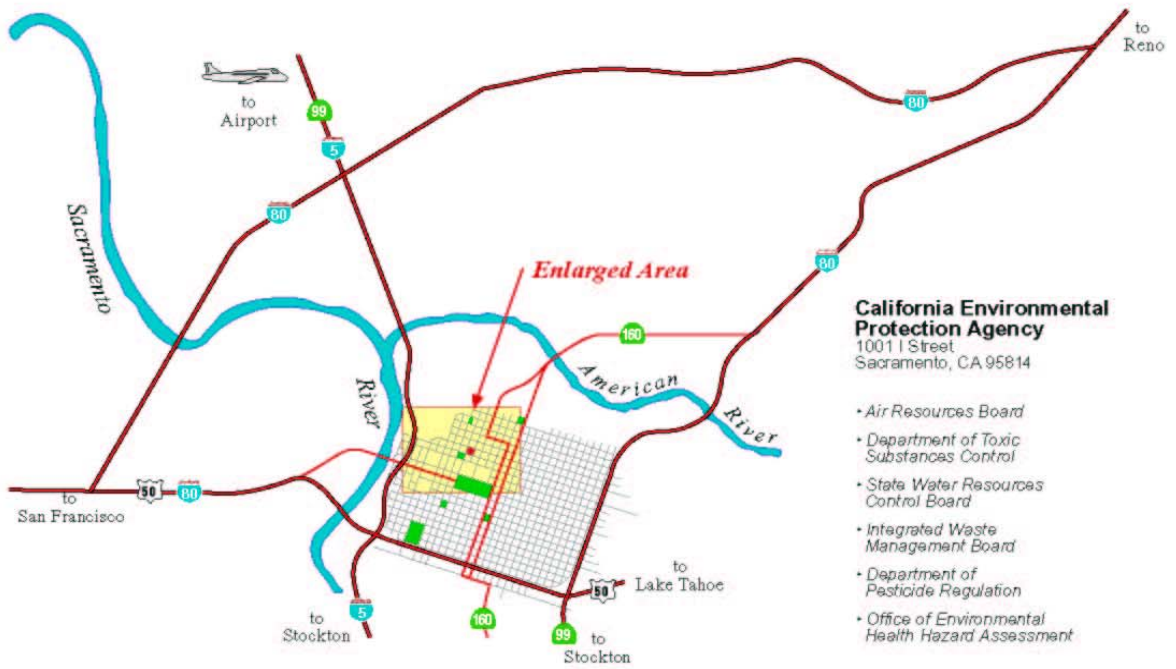
During the pendency of this proceeding and commencing no later than the issuance of this notice, there shall be no *ex parte* communications between State Water Board members or State Water Board hearing team staff and any of the other participants regarding substantive or controversial procedural matters 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 Dan Frink at (916) 341-5189.



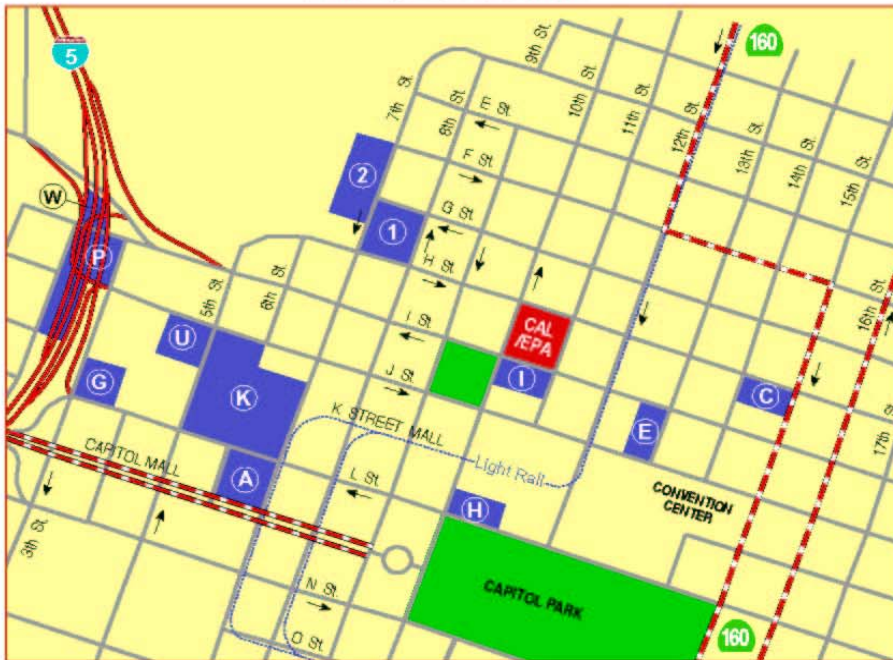
Song Her
Clerk to the Board

Date: September 22, 2006

Enclosures



Parking Lot Locations



Parking Lot Locations

- Lot 1 (7th & G St.)
- Lot 2 (7th & G St.)
- Lot A (7th & Capitol)
- Lot C (14th & H St.)
- Lot G (3rd & L)
- Lot H (10th & L)
- Lot I (10th & I, 11th & I)
- Lot K (6th & J/L, 7th & K)
- Lot P (2nd & I)
- Lot U (5th & J)
- Lot W (2nd & I St.)

INFORMATION CONCERNING APPEARANCE AT WATER RIGHT HEARINGS

HEARING ON YUBA COUNTY WATER AGENCY 2006 PETITION REQUESTING CHANGE IN THE EFFECTIVE DATE OF THE LONG-TERM INSTREAM FLOW REQUIREMENTS ESTABLISHED IN REVISED DECISION 1644

The following procedural requirements will apply and will be strictly enforced for purposes of the above-mentioned hearing.

1. **HEARING PROCEDURES GENERALLY:** The hearing will be conducted in accordance with the procedures for hearings set forth at California Code of Regulations, title 23, sections 648-649.6 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/water_laws/index.html.

Each party has the right to 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. The hearing officers may extend these rights to a non-party participant or may limit the participation of a non-party participant.

Any requests for exceptions to the procedural requirements specified in this notice shall be filed in writing. To provide time for other participants to respond, the hearing officers 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. **PARTIES:** The parties are the Yuba County Water Agency and any other persons or entities authorized by the hearing officers to participate in the hearing as parties. Only parties and other participants who are authorized by the hearing officers will be allowed to present evidence. A person or entity that appears and presents only a policy statement will not be allowed to participate in other parts of the hearing. The rules for policy statements are discussed below.
3. **NOTICE OF INTENT TO APPEAR:** Participants in this hearing must file two copies of a Notice of Intent to Appear, which must be **received** by the State Water Board no later than **noon on Monday, October 23, 2006**. Failure to submit a Notice of Intent to Appear and exhibits in a timely manner may be interpreted by the State Water Board as intent not to appear.

The Notice of Intent to Appear must state: (1) the name and address of the participant, (2) the name of each witness who will testify on the participant's behalf, (3) a brief description of the proposed testimony, and (4) an estimate of the time (not to exceed 20 minutes) that the witness will need to present a brief oral summary of the witness' testimony. The witness' testimony must be submitted in writing as described in Section 4 below. Participants who do not intend to present a case-in-chief but who may wish to cross-examine witnesses or present rebuttal should so indicate on the Notice of Intent to

Appear. Participants who decide not to present a case-in-chief after having submitted a Notice of Intent to Appear should notify the State Water Board and the other participants as soon as possible.

In order to expedite the exchange of information and lower the cost of participating in the hearing, the State Water Board encourages participants to submit written policy statements, written opening statements, written testimony, exhibits, and an Exhibit Identification Index to the State Water Board in electronic form. In addition, participants may exchange the foregoing documents in electronic form. Hearing participants are not required to submit these documents in electronic form or accept electronic service; however, those who choose to submit these documents electronically must comply with the requirements described in section 5, below. If you are willing to accept electronic media service in lieu of receiving hard copies of items, please check the appropriate box on the Notice of Intent to Appear.

The State Water Board will mail a service list of parties to exchange information to each hearing party who has submitted a Notice of Intent to Appear. Hearing participants who intend to make only policy statements are not required to exchange information and will not receive copies of written testimony or exhibits from the parties. The service list will indicate which participants agreed to accept electronic service. If there is any change in the hearing schedule, only those persons or entities that have filed a Notice of Intent to Appear will be informed of the change.

4. **WRITTEN TESTIMONY AND OTHER EXHIBITS:** Exhibits include written testimony, statements of qualifications of expert witnesses, and other documents to be used as evidence. Each participant proposing to present testimony on factual or other evidentiary matters at the hearing shall submit such testimony in writing.⁶ 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 participant who proposes to offer expert testimony must submit an exhibit containing a statement of the expert witness's qualifications.

Each participant shall submit to the State Water Board either: nine paper copies of each of its exhibits or five paper copies and one electronic copy of each of its exhibits. Each participant shall also serve a copy of each exhibit on every participant on the service list. Participants may serve those parties who agree to electronic service with an electronic copy of exhibits. Participants must serve paper copies of exhibits on those participants who do not agree to electronic service.

With its exhibits, each participant must submit to the State Water Board and serve on the other participants a completed Exhibit Identification Index. If possible, each participant should submit to the State Water Board and serve on the other participants an electronic copy, as well as a paper copy of the Exhibit Identification Index. Please see Section 5 for details regarding electronic submissions.

⁶ The hearing officer may make an exception to this rule if the witness is adverse to the participant presenting the testimony and is willing to testify only in response to a subpoena or alternative arrangement. In such a case, the hearing officer may allow presentation of the oral direct testimony without requiring written testimony.

A statement of service with manner of service indicated shall be filed with each participant's exhibits. The exhibits and indexes for this hearing, and a statement of service, must be **received** by the State Water Board by **noon on Friday, November 17, 2006**, and served on the other participants on or before that date.

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 hearing officers have 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 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 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.
 - d. Exhibits that rely on unpublished technical documents will be excluded unless the unpublished technical documents are admitted as exhibits.
5. **ELECTRONIC SUBMISSIONS:** Participants are encouraged to submit the following documents to the State Water Board in electronic form: written opening statements, written policy statements, written testimony, exhibits, and Exhibit Identification Indexes. In addition, the foregoing documents may be served electronically on those participants who have agreed to accept electronic service. Paper copies of all other documents must be submitted to the State Water Board and served on the other parties, unless the hearing officers specify otherwise.

Any documents submitted or served electronically must be in Adobe™ Portable Document Format (PDF), except for Exhibit Identification Indexes, which must be in a version supported by Microsoft Excel or Word. Electronic submittals to the State Water Board of documents less than 15 megabytes (incoming mail server attachment limitation) in total size may be sent via electronic mail to: emona@waterboards.ca.gov with a subject of "YRA-2007 Pilot Program Hearing". Electronic submittals to the State Water Board of documents greater than 15 megabytes in total size should be sent by regular mail in PDF

format on compact disk (CD™) media. Electronic service on participants shall be in the same format as submittals to the State Water Board, and should be submitted to the other participants by mail on CD.

Participants who agree to electronic service may request that specific documents be provided to them in paper copy. Requests should be made to the participant who submitted the document, not to the State Water Board. Participants who receive such a request shall provide a paper copy of the requested document within five days of the date the request is received. The State Water Board will post a list of all exhibits submitted for the hearing on its website at: <http://www.waterrights.ca.gov/Hearings/yra2007pilot.html>.

6. **ORDER OF PROCEEDING:** The State Water Board members serving as hearing officers 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.
 - a. **Policy Statements:** 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 participating in the hearing. Policy statements will be heard at the start of the hearing, immediately after a hearing officer identifies the parties and other participants. Policy statements are subject to the following provisions in addition to the regulation:
 - i. Policy statements are not subject to the prehearing requirements noted above for testimony or exhibits, except that persons wishing to make policy statements are requested to file a Notice of Intent to Appear, indicating clearly an intent to make only a policy statement.
 - ii. The State Water Board requests that policy statements be provided in writing before they are presented. Please see Section 5, above, for details regarding electronic submittal of policy statements. Oral summaries of the policy statements will be limited to five minutes or such other time as established by the hearing officers.
 - b. **Presentation of Cases-In-Chief:** Each participant 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 provided by the participant, oral testimony, introduction of exhibits, and cross-examination of the participant's witnesses. The hearing officer may allow redirect examination and recross examination. The hearing officer will decide whether to accept the participant's exhibits in evidence upon a motion of the participant after the case-in-chief has been completed.
 - i. **Opening Statements:** At the beginning of a case-in-chief, the participant or the participant'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 20 minutes per participant. A participant may submit a written opening statement. Please see

section 5, above, for details regarding electronic submittal of written opening statements. Any policy-oriented statements by a participant should be included in the participant's 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. Witnesses will be allowed up to 20 minutes to summarize or emphasize their written testimony on direct examination.⁷ Each participant will be allowed up to two hours total to present all of its direct testimony.⁸
- 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. If a participant presents multiple witnesses, a hearing officer will decide whether the participant's witnesses will be cross-examined as a panel. Cross-examiners initially will be limited to one hour per witness or panel of witnesses. The hearing officers have discretion to allow additional time for cross-examination if there is good cause demonstrated in an offer of proof. Any redirect examination and recross examination permitted by a hearing officer will be limited to the scope of the cross-examination and the redirect examination, respectively. Witnesses may be cross-examined on relevant subjects that are not covered in the direct testimony. (Gov. Code, § 11513, subd. (b).) Ordinarily, only a participant or the participant's representative will be permitted to examine a witness, but a hearing officer may allow a participant to designate a person technically qualified in the subject being considered to examine a witness. State Water Board members and the State Water Board's counsel may ask questions at any time, and the State Water Board members and staff may cross-examine any witness.
- c. **Rebuttal:** After all participants have presented their cases-in-chief and their witnesses have been cross-examined, the hearing officers will allow participants to present rebuttal evidence. Rebuttal evidence is new evidence used to rebut evidence presented in another participant's case-in-chief. Rebuttal testimony and exhibits need not be submitted prior to the hearing. Rebuttal evidence is limited to evidence that is responsive to evidence presented in a case-in-chief, and it does not include evidence that should have been presented during the presenter's case-in-chief. 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, a hearing officer may allow oral arguments or set a schedule for filing briefs or closing statements. If a hearing officer authorizes the participants to file briefs, five copies of each brief shall be submitted to the State Water Board, and one copy shall be served on each of the other participants on the service list. A participant shall not attach a document of an evidentiary nature to a brief unless the document is at the time in the evidentiary hearing record or is the subject of an offer of the

⁷ The hearing officer may allow additional time for the oral direct testimony of the witness if the witness is adverse to the participant presenting the testimony and the hearing officer is satisfied that the participant could not produce written direct testimony for the witness.

⁸ The hearing officer may, for good cause, approve a party's request to use more than two hours total to present direct testimony during the party's case-in-chief.

document in evidence. Every participant filing a brief shall file a statement of service with the brief, indicating the manner of service.

- e. **Large Format Exhibits:** Participants 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. **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 between either State Water Board members or State Water Board hearing team staff and any of the other participants regarding substantive issues within the scope of the proceeding. (Gov. Code, §§ 11430.10-11430.80.) Communications regarding non-controversial procedural matters are permissible, and should be directed to the State Water Board staff attorney on the hearing team, not State Water Board members. (Gov. Code, § 11430.20, subd. (b).) A memorandum regarding *ex parte* communications is available upon request or from our website at http://www.waterboards.ca.gov/water_laws/index.html
8. **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.
9. **SUBMITTALS TO THE STATE 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
State Water Resources Control Board
P.O. Box 2000, Sacramento, CA 95812-2000
Attn: Ernest Mona
Phone: (916) 341-5359
Fax: (916) 341-5400
Email: emona@waterboards.ca.gov
With Subject of "YRA – 2007 Pilot Program Hearing"

STAFF EXHIBITS TO BE OFFERED INTO EVIDENCE

1. All water right files related to Permits 15026, 15027 and 15030 (Applications 5632, 15204 and 15574).
2. State Water Resources Control Board Revised Decision 1644.
3. State Water Resources Control Board Order WR 2003-0016.
4. State Water Resources Control Board Order WR 2006-0009.
5. State Water Resources Control Board Order WR 2006-0010-DWR.

NOTICE OF INTENT TO APPEAR

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

**YRA – 2007 PILOT PROGRAM
scheduled for
December 11, 2006 and continuing,
if necessary, on December 12, 2006**

- I/we wish to protest the petition.
- I/we intend to present a policy statement only.
- I/we intend to participate by cross-examination or rebuttal only.
- I/we agree 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) |
|------|-------------------------------|--------------------------------------|-------------------------|
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(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 Address: _____

DECEMBER 2006 HEARING ON YCWA CHANGE PETITION

Exhibit Identification Index

Participant _____

| Exhibit No. | Description | Status as Evidence | | |
|-------------|-------------|--------------------|----------|--------------------|
| | | Introduced | Accepted | By Official Notice |
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(updated 09/13/2006)

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