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Secretary for
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State Water Resources Control Board

Division of Water Rights

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Arnold Schwarzenegger
Governor

NOTICE OF PUBLIC HEARING and PRE-HEARING CONFERENCE

Lower Yuba River in Yuba County

The State Water Resources Control Board (State Water Board) will hold a Hearing to Consider Yuba County Water Agency's (YCWA) Petition to Modify Water Right Permits 15026, 15027 and 15030 (Applications 5632, 15204 and 15574)
and

Petition for Long-Term Transfer of up to 200,000 Acre-Feet of Water from YCWA to the Department of Water Resources (DWR) and the United States Bureau of Reclamation (USBR) under Permit 10506 (Application 5632)

A Pre-Hearing Conference

will commence on

Thursday, October 25, 2007, at 10:00 a.m.

The **Hearing** will commence on

Wednesday, December 5, 2007, at 9:00 a.m.

and continue, if necessary,

on **Thursday, December 6, 2007, at 9:00 a.m.**

at

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

PURPOSE OF HEARING

The purpose of this hearing is to receive evidence to be considered by the State Water Board in determining whether to approve YCWA's petition to modify Permits 15026, 15027 and 15030 (Applications 5632, 15204 and 15574) and whether to approve YCWA's petition for long-term transfer of up to 200,000 acre-feet of water from YCWA to the DWR and the USBR, under Permit 10506 (Application 5632). Both petitions are related to the proposed Lower Yuba River Accord (Yuba Accord).

BACKGROUND

On July 16, 2003, the State Water Board adopted Revised Decision 1644 (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

California Environmental Protection Agency

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 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, 2008.¹

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.

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 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. 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. On April 21, 2005, YCWA, several Yuba River water purveyors, DWR, 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. This settlement proposal is the Yuba Accord.

On April 27, 2007, YCWA filed its petition for modification of Permits 15026, 15027 and 15030 (Applications 5632, 15204 and 15574) and petition for long-term transfer of water under Permit 10506 (Application 5632). The petitions were submitted to enact changes necessary to implement the Yuba Accord.

The proposed Yuba Accord includes three separate but related agreements: (1) the Fisheries Agreement,² (2) the Water Purchase Agreement,³ and (3) the Conjunctive Use Agreement.⁴ 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 fisheries 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.

¹ See [ORDER WR 2006-0009](#) and [ORDER WR 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

² 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.

³ The Water Purchase Agreement for the proposed Yuba Accord would be signed by DWR, YCWA, and USBR.

⁴ 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.

On June 29, 2007, the State Water Board issued a Notice of Petition for Modification and a Notice of Petition for Long-Term Transfer.⁵ In response to the notices, the following persons filed protests:

Protestant	Basis of Protest	Status of Protest
Anglers Committee of California	Environmental, Public Trust	Accepted
South Delta Water Agency	Potential injury to prior rights, public interest considerations, contrary to law	Accepted

PROJECT DESCRIPTION

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. YCWA requests the following changes as steps toward such implementation.

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-1644:⁶

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.

Petition for Long-Term Transfer: Pursuant to the proposed Yuba Accord's Water Purchase Agreement, YCWA proposes to transfer up to 200,000 acre feet of water per year (afa) under Permit 15026 to DWR, to USBR, and, during the first nine years of the transfer agreement, to the Environmental Water Account (EWA)⁷ (or substitute fisheries enhancement or water supply reliability projects). Under this transfer, water would be released from New Bullards Bar Reservoir into Englebright Reservoir (via the Colgate Power House) to the Yuba River (through

⁵ See: <http://www.waterrights.ca.gov/application/tempurgnotices.htm> and <http://www.waterrights.ca.gov/application/PetNot.htm>.

⁶ Hard copies of the petition and of RD-1644 are 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>. RD-1644 is available electronically at: <http://www.waterrights.ca.gov/hearings/decisions/RevisedWRD1644.pdf>.

⁷ The Environmental Water Account is a program administered by DWR and USBR that is intended to mitigate water supply impacts to State Water Project and Central Valley Project contractors from reductions in exports that are made to protect fishery resources, primarily within the Sacramento-San Joaquin Delta area. DFG, USFWS, and NMFS are the agencies that collaborate to request export reductions. Water that is acquired for the EWA is used to provide make-up water for the curtailment of water exports due to fishery protection concerns and to allow for shifting water exports to other periods.

the Narrows II Powerhouse and Daguerre Point Dam) thence the Feather River thence the Sacramento River to the Delta. Water reaching the Delta would be available to provide salinity and water quality controls within the Delta or to export from the Delta at either the Clifton Court Forebay or the Tracy Pumping Plant for use within the State Water Project (SWP) or Central Valley Project (CVP) service areas.

The long-term transfer petition does not specify the maximum release rates. However, in the past, YCWA has stated that the maximum release rate from Englebright Reservoir under most hydrologic conditions is approximately 750 cubic feet per second (cfs), but that during dry years this may increase to approximately 1,000 cfs.⁸

For the transfer period, YCWA proposes to amend Permit 15026 to add the Clifton Court Forebay and Tracy Pumping Plant as points of rediversion, and to add the service areas of the SWP⁹ and CVP¹⁰ to the place of use. Additionally, YCWA proposes to add municipal use, salinity control and water quality control as purposes of use. The petition requests that these changes be effective from January 1, 2008 through December 31, 2025. However, the petition also requests that the State Water Board revisit any order approving the transfer by May 2016 at the latest, in order to consider whether to make any adjustments to the order.

Additional information regarding the proposed long-term transfer, including the transfer amounts and pricing in different water-year types, is contained in the Water Purchase Agreement.¹¹

ENVIRONMENTAL INFORMATION

YCWA and 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). 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_projdetails.cfm?Project_ID=2549

KEY ISSUES

1. Should the State Water Board approve YCWA's Petition for Modification of Water Right Permits 15026, 15027 and 15030 (Applications 5632, 15204 and 15574) and, if so, under what, if any, terms and conditions?
 - a. Would the proposed changes injure any legal user of water?
 - b. Would the proposed changes, in effect, initiate a new water right?
 - c. Would the proposed changes unreasonably affect fish, wildlife, or other instream beneficial uses of water?

⁸ YCWA provided this information as part of its 2006 & 2007 Pilot Transfer Programs, in which YCWA operated its facilities to comply with the interim flow requirements of both RD-1644 and the Yuba Accord's Fisheries Agreement, as well as with the water transfer provisions described in the Yuba Accord's Water Purchase Agreement.

⁹ The SWP's service area is shown on maps 1878-1, 2, 3, & 4 on file with Application 5629.

¹⁰ The CVP's service area is shown on map 214-208-12581 on file with Application 5626.

¹¹ A copy of the agreement is included in YCWA's DEIR/DEIS for the proposed Accord, which is posted at : http://www.usbr.gov/mp/nepa/nepa_projdetails.cfm?Project_ID=2549

- d. Would implementing the YCWA's petitioned specific changes to RD-1644 and the proposed Yuba Accord Fisheries Agreement¹² 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 is provided by RD-1644?
2. Should the State Water Board approve YCWA's Petition for Long-Term Transfer of water under Water Right Permit 15026 (Application 5632) and, if so, under what, if any, conditions?
 - a. Would the proposed transfer harm any legal user of water?
 - b. Would the proposed transfer unreasonably affect fish, wildlife, or other instream beneficial uses of water?

HEARING OFFICER AND HEARING TEAM

State Water Board Member Arthur G. Baggett, Jr., will preside as hearing officer over this proceeding. Other Board members may be present during the hearing. The hearing team consists of the Board members and the staff assisting the Board members with the hearing. State Water Board staff hearing team members will include Staff Counsel Marianna Aue, Water Resources Control Engineers Greg Wilson and Ernest Mona and Environmental Scientist Jane Farwell. The hearing staff will assist the hearing officer and other members of the State Water Board during the hearing.

PRE-HEARING CONFERENCE

The hearing officer will conduct a pre-hearing conference to discuss the scope of the hearing and any other appropriate procedural issues on **Thursday, October 25, 2007, at 10:00 a.m.** The goal of the pre-hearing conference is to ensure that the hearing proceeds in an orderly and expeditious manner. The pre-hearing conference will not be used to hear arguments on, or determine the merits of, any hearing issues, other than procedural matters, unless the parties agree to resolve a hearing issue by stipulation. Following the pre-hearing conference, the State Water Board may, at its discretion, modify the hearing procedures or issues set forth in this notice in whole or in part. **All parties to the hearing must attend the pre-hearing conference.** Failure to attend the pre-hearing conference may result in exclusion from participation in the hearing.

HEARING PARTICIPATION

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, everyone wishing 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 the deadline listed below. About one week after the deadline for Notices of Intent to Appear, the State Water Board will mail out a list of those who have indicated a desire to participate in the hearing and a

¹² Under the Yuba Accord Fisheries Agreement, YCWA will be contractually obligated to operate the Yuba River Project to provide minimum instream flows in the Lower Yuba River that are specified in Exhibits 1 through 5 to the Agreement. YCWA contends that these minimum 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 level of protection that would be provided by the long-term instream flow requirements in RD-1644.

copy of all Notices of Intent to Appear that were timely received by the State Water Board. 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 hearing officer will be allowed to present evidence. 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 the deadline listed below.

Noon, Friday, October 5, 2007

Deadline for receipt of Notice of Intent to Appear.

Noon, Friday, November 9, 2007

Deadline for receipt and service of witnesses' proposed testimony, exhibits, lists of exhibits, and qualifications.


IF YOU HAVE ANY QUESTIONS

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 State Water Board Staff Counsel Marianna Aue at (916) 327-4440.

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 is accessible to people with disabilities. Individuals who require special accommodations are requested to contact Adrian Perez, Office of Employee Assistance, at (916) 341-5880.

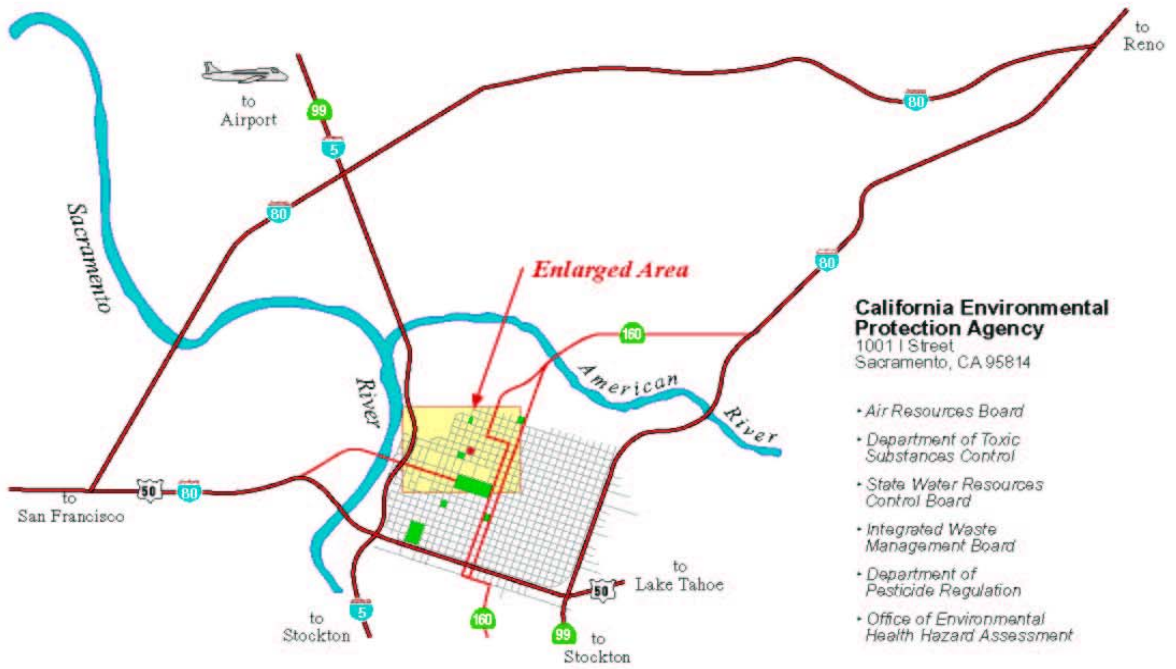
Due to enhanced security precautions at the Cal/EPA Headquarters Building, all visitors are required to register with security staff prior to attending any meeting. To sign in and receive a visitor's badge, visitors must go to the Visitor and Environmental Services Center, located just inside and to 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 up to fifteen minutes. Please allow adequate time to sign in before being directed to the hearing.



Jeanine Townsend
Acting Clerk to the Board

Date: September 6, 2007

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

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

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 648-648.8, 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/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 officer 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 officer 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, Anglers Committee of California, South Delta Water Agency, and any other persons or entities authorized by the hearing officer to participate in the hearing as parties. Only parties and other participants who are authorized by the hearing officer 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 **the deadline prescribed in the Hearing Notice**. 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 their testimony. The witness's testimony must be submitted in writing as described in Section 4 below. Participants 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. 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.¹ 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: seven 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.

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 and served on the other participants no later than the deadline prescribed 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 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

¹ 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.

- 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.
 - e. 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.
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: wrhearing@waterboards.ca.gov with a subject of "Proposed Lower Yuba River Accord 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/HTML/loweryubariver.html>

6. **ORDER OF PROCEEDING:** The State Water Board member serving as hearing officer 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.² Each participant will be allowed up to two hours total to present all of its direct testimony.³

² 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.

³ 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.

- 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 officer has 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 officer 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, the hearing officer may allow oral arguments or set a schedule for filing briefs or closing statements. If the 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 document in evidence. Every participant filing a brief shall file a statement of service with the brief, indicating the manner of service.
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 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/docs/exparte.pdf>.

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: wrhearing@waterboards.ca.gov
emona@waterboards.ca.gov

With Subject of "Proposed Lower Yuba River Accord Hearing"

STAFF EXHIBITS TO BE OFFERED INTO EVIDENCE

The following items will be offered, by reference, as staff exhibits at the Proposed Lower Yuba River Accord Hearing:

1. All water right files related to:
 - a. Application 5632
 - b. Application 15204
 - c. Application 15574
2. Topographic Maps published by the United States Geological Survey covering the area under consideration.
3. United States Geological Survey, "Water Resource Data, California" for the period of published record and covering the Yuba River watershed and the San Francisco Bay Delta (available at <http://waterdata.usgs.gov/ca/nwis>).
4. Climatology Data for the Yuba River watershed and the San Francisco Bay Delta for the period of published record (available at <http://cdec.water.ca.gov/>).
5. California Department of Water Resources' Water Data Library (WDL) hydrologic data (available at <http://wdl.water.ca.gov/>).
6. Draft/Final Environmental Impact Report/Environmental Impact Statement for the Proposed Yuba River Accord, 2007 (State Clearing House #S2005062111).
7. State Water Board Decision 1644 - In the matter of fishery resources and water right issues of the Lower Yuba River in Yuba County (available at http://www.waterrights.ca.gov/hearings/d1600_d1649.html).
8. State Water Board Revised Decision 1644 - In the matter of fishery resources and water right issues of the Lower Yuba River in Yuba County (available at http://www.waterrights.ca.gov/hearings/d1600_d1649.html), and the evidence presented in the hearings preceding that decision.
9. Order WR 2001-08 - Order Amending Decision 1644 and Dismissing Petitions for Reconsideration (available at http://www.waterrights.ca.gov/hearings/d1600_d1649.html), and the evidence presented in the hearings preceding that decision.
10. Order WR 2003-0016 - Order Vacating Water Right Decision 1644 and Adopting Revised Water Right Decision 1644 Following Consideration of Additional Evidence Specified by Yuba County Superior Court (available at http://www.waterrights.ca.gov/hearings/d1600_d1649.html).
11. Order WR 2006-0009 - Order Changing (First Petition to Change) the Effective Date of the Long-Term Instream Flow Requirements Established in Revised Water Right Decision 1644 (available at http://www.waterrights.ca.gov/hearings/d1600_d1649.html).
12. Order WR 2007-0002-DWR - Order Changing (Second Petition to Change) the Effective Date of the Long-Term Instream Flow Requirements Established in Revised Water Right Decision 1644 (available at http://www.waterrights.ca.gov/hearings/d1600_d1649.html).

NOTICE OF INTENT TO APPEAR

_____ plans to participate in the water right hearing regarding
 (Name of Party or Participant)

**Yuba County Water Agency (YCWA)
 Petition to Modify Water Right Permits 15026, 15027 and 15030
 (Applications 5632, 15204 and 15574)**

and

**Petition for Long-Term Transfer of up to 200,000 Acre-Feet of Water from YCWA to the
 Department of Water Resources (DWR) and the United States Bureau of Reclamation (USBR)
 under Permit 10506 (Application 5632)**

scheduled for
**Wednesday, December 5, 2007, and continuing,
 if necessary, on Thursday, December 6, 2007.**

- 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)

(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: _____

**Yuba County Water Agency (YCWA)
Petition to Modify Water Right Permits 15026, 15027 and 15030
(Applications 5632, 15204 and 15574)**

and

**Petition for Long-Term Transfer of up to 200,000 Acre-Feet of Water from YCWA to the
Department of Water Resources (DWR) and the United States Bureau of Reclamation (USBR)
under Permit 10506 (Application 5632)**

Exhibit Identification Index

Participant _____

Exhibit No.	Description	Status as Evidence	
		Introduced	Accepted