



**Winston H. Hickox**  
Secretary for  
Environmental  
Protection

# State Water Resources Control Board

## Division of Water Rights

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## NOTICE OF PUBLIC HEARING AND PRE-HEARING CONFERENCE

**The State Water Resources Control Board will hold a hearing on a petition for long-term transfer involving a change in the place and purpose of use of Licenses 2685, 6047 and 11395 (Application 1224, 10572 and 16186) of Merced Irrigation District and Licenses 5417 and 11058 (Applications 1233 and 14127) of Modesto and Turlock Irrigation Districts**

**A Pre-hearing Status Conference will commence  
on December 4, 2002 at 9:00 a.m.**

**at**

**Joe Serna Jr./Cal EPA Building  
Sierra Room – Second Floor  
1001 I Street, Sacramento**

**The hearing will commence on January 28, 2002 at 10:00 a.m.  
and continue, if necessary, on January 29 and 30, 2002 at 9:00 a.m.**

**at**

**Joe Serna Jr./Cal EPA Building  
Sierra Room – Second Floor  
1001 I Street, Sacramento**

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### **SUBJECT OF THE HEARING**

The purpose of this hearing is to receive evidence that will assist the State Water Resources Control Board (SWRCB) in determining whether and under what conditions to approve a Petition for Long-Term Transfer filed on March 19, 2001 by the Merced Irrigation District (Merced) and Modesto and Turlock Irrigation Districts (MID/TID) (collectively referred to herein as “petitioners”) pursuant to Water Code sections 1707 and 1735 et seq. The petitioners seek approval of a long-term transfer of water and change in place of use and purpose of use of water under Merced’s Licenses 2685, 6047, and 11395 (Applications 1224, 10572, and 16186) and MID/TID’s Licenses 5417 and 11058 (Applications 1233 and 14127). The petitioners propose to transfer up to 47,000 acre-feet of water. The purpose of the proposed transfer is to conduct the Vernalis Adaptive Management Plan (VAMP) experiments. In Decision 1641 as revised by Order WR 2000-02<sup>1</sup> (D-1641), the SWRCB

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<sup>1</sup> Revised D-1641 is available on the internet at <http://www.waterrights.ca.gov/BayDelta/d1641.htm> or upon request from the Division of Water Rights by telephone at (916) 341-5300.

approved a similar petition; the water under this petition is in addition to the water transferred under D-1641.

### **PRE-HEARING CONFERENCE**

The hearing officer will conduct a pre-hearing status conference to discuss the scope of the hearing, the status of protests to the petition, and any other appropriate procedural issues on **Wednesday, December 4, 2002 at 9:00 a.m.** The goal of the pre-hearing conference is to ensure that the hearing proceeds in an orderly and expeditious manner. There will be no discussion during the prehearing conference of the merits of the specific issues raised in the petition. Following the pre-hearing conference, the SWRCB may in its discretion modify this notice in whole or in part. All parties to the hearing are encouraged to attend the pre-hearing conference.

### **BACKGROUND**

In 1995, the SWRCB adopted the Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary (1995 Bay-Delta Plan) that included flow objectives, including a 31-day spring pulse flow objective in April/May, for the San Joaquin River at Vernalis. In D-1641, among other things, the SWRCB approved changes in the water rights of water right holders who proposed the changes under a settlement agreement known as the San Joaquin River Agreement (SJRA).

The SJRA provides the framework for the conduct of an experiment known as the VAMP. The VAMP is a 12-year experimental program designed to assess the effect of export pumping at various specific river flows on salmon smolt survival through the Delta. The SJRA and the VAMP specify various flow levels at Vernalis and various export limits at the State Water Project and Central Valley Project pumps. The flows and export limits are based on existing flows in the San Joaquin River during the spring pulse flow period. Under the SJRA, certain water right holders agree to provide flows during the April/May pulse flow period up to a total limit of 110,000 acre-feet per year (afa) for 12 years, starting in 1999. In D-1641, the SWRCB temporarily amended certain water rights to authorize changes in place and purpose of use that were necessary in order for those water right holders to provide these flows under their permits and licenses; however, that authorization will expire on December 31, 2011 or upon termination of the SJRA, whichever occurs first.

Section 5.6 of the SJRA defines certain years as "double-step" years (projected to occur about one year in ten) in which the SJRGA members will provide water in excess of the 110,000 afa authorized by D-1641 to achieve the VAMP. Double step years are also defined in D-1641 (pages 161-162). The maximum amount of additional water (in excess of 110,000 afa) required by the SJRA for fish and wildlife use in the river during double-step years is estimated based on computer modeling studies to be 47,000 afa. Under the SJRA, Merced or MID/TID will provide the additional 47,000 afa of water via the Tuolumne and Merced rivers.

### **SUBSTANCE OF THE PETITIONS FOR TRANSFER**

Under the petition for long-term transfer involving water right changes, the petitioners propose to add a purpose of use and increase the place of use pursuant to Water Code

sections 1707 and 1735 with respect to up to 47,000 afa of water stored or diverted under Licenses 2685, 9047, and 11395 of Merced, and under Licenses 5417 and 11058 of MID/TID. The proposed purpose of use of the water subject to the transfer is fish and wildlife preservation and the proposed places of use are the Merced River downstream of Lake McClure for Merced's licenses, the Tuolumne River downstream of New Don Pedro Reservoir for MID/TID's licenses, and the San Joaquin River from the confluence of either the Merced or the Tuolumne river to Vernalis. The intention of the proposed long-term transfer is to allow the petitioners to release additional water for the April/May spring pulse flow objective during double-step years pursuant to the SJRA. If approved, the transfer could commence as early as April of 2003 and would continue through May 2011.

### **PROTESTS**

The SWRCB gave notice of this petition on October 16, 2001. The SWRCB received protests from the United States Bureau of Reclamation (USBR), Stockton East Water District (SEWD), South Delta Water Agency (SDWA) and Central Delta Water Agency (CDWA). The USBR and SEWD withdrew their protests following an agreement with the petitioners to include the refill condition for New Melones Reservoir specified in D-1641 (condition 3, page 169) in the licenses for Merced and MID/TID. The USBR and the petitioners also request that the condition in D-1641 requiring coordination of water release planning (condition 6, page 168) and the condition requiring the petitioners to submit an operations report for the SJRA to the SWRCB (condition 7 on page 168) be included in the licenses. Consistent with D-1641, the USBR and the petitioners request that these conditions remain in effect during the term of the transfer. Protests by SDWA and CDWA, based on injury to prior water rights and environmental grounds, remain unresolved.

### **COMPLIANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT**

Two environmental documents address the environmental effects of the proposed changes. Those documents include an Environmental Impact Statement/Environmental Impact Report, titled *Meeting Flow Objectives for the San Joaquin River Agreement*, prepared in support of the SJRA, and a supplemental Environmental Impact Statement/Environmental Impact Report, titled *Acquisition of Additional Waters for Meeting Flow Objectives for the San Joaquin River Agreement*, prepared in support of this petition. The SJRGA acted as lead agency for preparation of both documents and has certified them as final.

### **KEY ISSUES**

1. **Would the petitioned changes unreasonably affect any legal user of water or result in substantial injury to any legal user of water?** (Wat. Code, §§ 1707(b)(2) and 1736.) The petitioners are requested to provide evidence as to why the proposed changes will have neither an unreasonable effect on any legal user of water nor a substantial injury to any legal user of water. The protestants claiming injury to existing water rights should present evidence demonstrating the specific injury to the existing water right that would result from approval of the changes proposed by the petition. In addition, the protestants claiming injury should present evidence that describes the basis of their claims to a water right, the date the water use began, the quantity of water use during each period of the year that might be affected by the proposed transfer, the purpose of use, and the specific place of use.

2. **Would the petitioned changes unreasonably affect fish, wildlife, or other instream beneficial uses of water?** (Wat. Code, § 1736.) The petitioners are requested to provide evidence as to why the proposed changes will have no unreasonable effect on fish, wildlife, or other instream beneficial uses of water. The protestants claiming there will be adverse impacts to the environment or to public trust values must present evidence supporting these claims.
3. **Are the purposes of the petitioned changes to preserve or enhance wetlands habitat, fish and wildlife resources, or recreation in, or on, the water?** (Wat. Code, § 1707(a).) If so, will these purposes be carried out if the petitioned changes are approved by the SWRCB?
4. **If the SWRCB approves the petitioned changes, what terms and conditions will best develop, conserve and utilize, in the public interest, the water subject to the change?** (Wat. Code, § 1707(b).) Factors that the SWRCB should consider in determining the public interest are described in Water Code section 1256.
5. **Would the petitioned changes increase the amount of water each of the petitioners is entitled to use?** (Wat. Code, § 1707 (b)(1).) The petitioners are responsible for showing that there will be no increase in the amount of water each of them are entitled to use.
6. **Will the petitioned changes otherwise meet the requirements of Division 2 of the Water Code?** (Wat. Code, § 1707(b)(3).)

### **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, parties intending to present evidence at the hearing must submit a **Notice of Intent to Appear**, which must be received by the SWRCB by **4:00 p.m. on Monday, November 18, 2002.**

To facilitate exchange of testimony, exhibits and witness qualifications, on or about **Thursday, November 21, 2002**, the SWRCB will mail out a list of those parties who have indicated an intent to participate in the hearing.

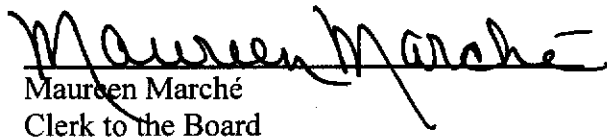
Copies of witnesses' proposed testimony, exhibits, list of exhibits, and qualifications must be served upon and received by the SWRCB and each of the parties who have indicated their intent to appear no later than **4:00 p.m. on Wednesday, December 18, 2002.**

### **PARKING AND ACCESSIBILITY**

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 Sierra Room is accessible to persons with disabilities.

**IF YOU HAVE ANY QUESTIONS**

SWRCB Chairman Arthur G. Baggett, Jr. will be the hearing officer presiding over this proceeding. SWRCB hearing team members will be Barbara Leidigh, Staff Counsel IV, Ernie Mona, Water Resources Engineer, and Diane Lawson, Environmental Scientist. *Ex parte* communications with members of the Board or SWRCB staff on the hearing team regarding substantive or controversial procedural matters involved in the hearing are prohibited during the pendency of this proceeding. (Gov. Code, §§ 11430.10-11430.80.) Communications regarding routine non-controversial procedural matters (See Gov. Code, § 11430.20, subd. (b).) should be directed to Barbara Leidigh, Staff Counsel IV, at (916) 341-5190.

  
Maureen Marché  
Clerk to the Board

Enclosure

Date: November 7, 2002

**CERTIFIED MAIL  
SERVICE LIST  
Hearing on SJRGA Petitions  
For Use With Avery 5360  
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Power L.A. Aqueduct Division  
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Napa, CA 94558

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Bolen Fransen & Brostrom  
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Rancho Cordova, CA 95670

CA Department of Fish & Game  
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Fresno, CA 93710

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Foundation c/o Martin Seldon  
1146 Pulora Court  
Sunnyvale, CA 94087-2331

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San Francisco, CA 94102

Dept. of Boating & Waterways c/o Mike  
Ammon  
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Sacramento, CA 95815-3888

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Water Dist. & 3H Securities Co.  
P.O. Box 818  
Newman, CA 95360-0818

Hetch Hetchy Water & Power City  
County of San Francisco  
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San Francisco, CA 94103

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Modesto, CA 95352

Modesto Irrigation District Legal  
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R. Fuller, Preservation Comm. Central  
Sierra Me-Wuk Culture  
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Regional Water Quality Control Board  
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Regional Water Quality Control Board  
Central Valley Region (5F)  
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Fresno, CA 93726

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Central Valley Region  
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River Junction Reclamation Dis. #2064  
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Sacramento, CA 95814

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San Rafael, CA 94901

The Associated Press  
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Sacramento, CA 95814

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Sonora, CA 95370

Turlock Irrigation District  
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Turlock, CA 95381

U.S. BLM Bakersfield District Manager  
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Bakersfield, CA 93308-6837

U.S. BLM Folsom District Office  
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Folsom, CA 95630

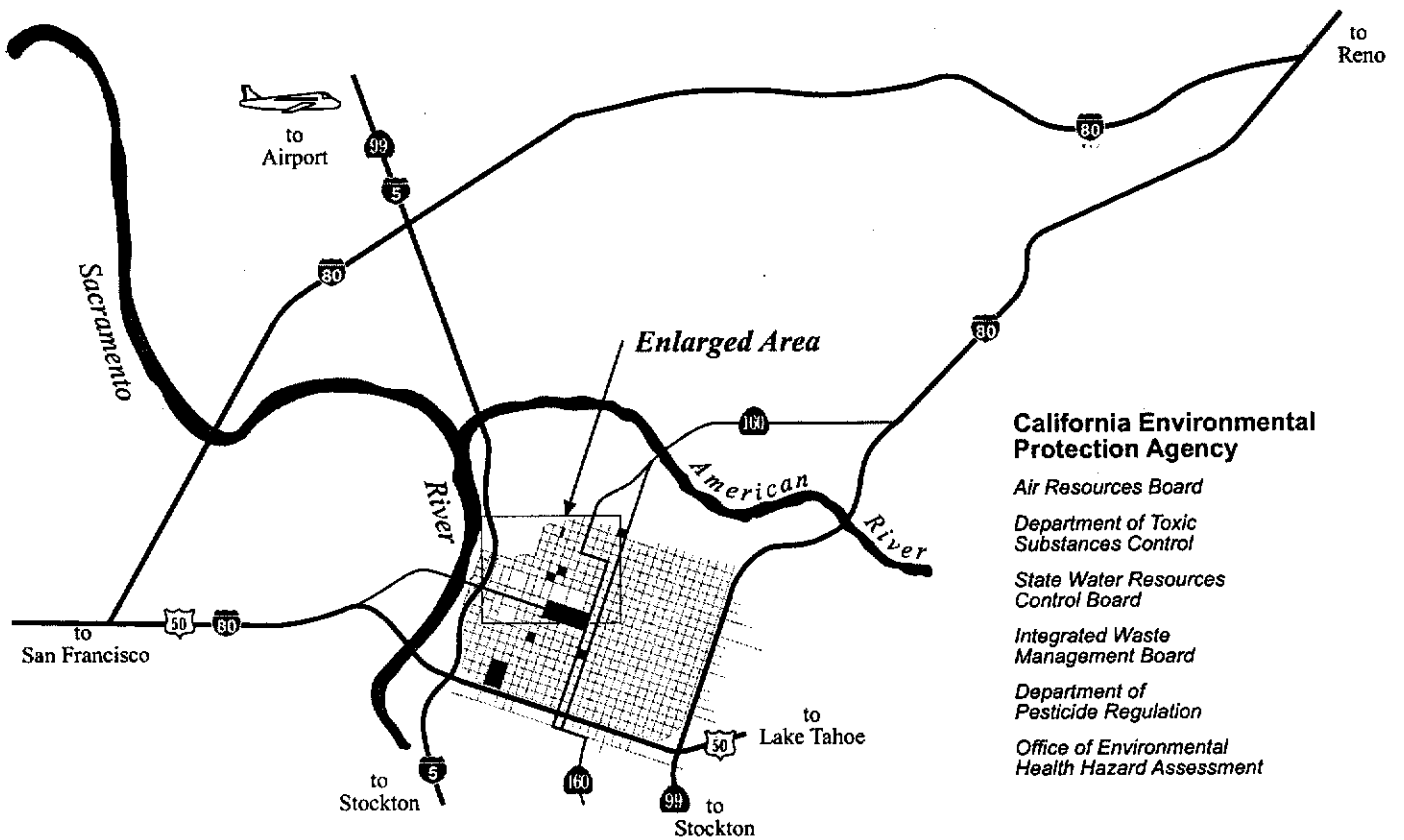
U.S. Fish & Wildlife Service Ventura  
Fish & Wildlife Office  
2493 Portola Road, Suite B  
Ventura, CA 93003

U.S. Fish and Wildlife Service  
2800 Cottage Way #3-2605  
Sacramento, CA 95825-1846

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2800 Cottage Way, Room E1803  
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1325 J Street  
Sacramento, CA 95814-2922

Yuba-Sutter Appeal Democrat  
P.O. Box 431  
Marysville, CA 95901



**California Environmental Protection Agency**

*Air Resources Board*

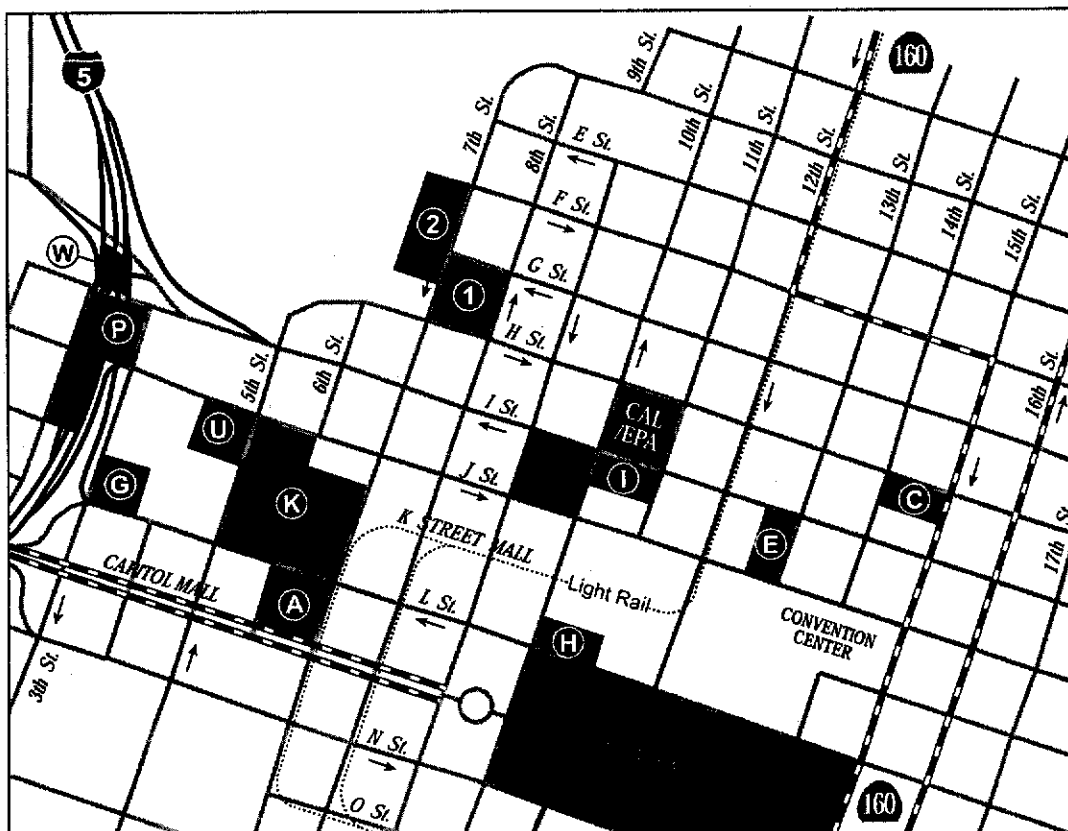
*Department of Toxic Substances Control*

*State Water Resources Control Board*

*Integrated Waste Management Board*

*Department of Pesticide Regulation*

*Office of Environmental Health Hazard Assessment*



**Lot 1 (7th & G St.)**  
\$0.75 ea. 1/2 hr.

**Lot 2 (7th & G St.)**  
\$0.75 ea. 1/2 hr.

**Lot A (7th & Capitol)**  
\$0.75 ea. 1/2 hr. for first 2 hrs.  
\$1.50 ea. additional hr.  
\$8.00 maximum charge

**Lot C (14th & H St.)**  
\$5.00 flat rate

**Lot G (3rd & L)**  
\$0.75 ea. 1/2 hr. for first 2 hrs.  
\$1.25 ea. additional 1/2 hr.  
\$13.00 daily maximum charge

**Lot H (10th & L)**  
\$1.25 each 1/2 hr.  
\$15.00 daily maximum charge

**Lot I (10th & I, 11th & I)**  
\$1.00 each 1/2 hr.  
\$12.00 daily maximum charge

**Lot K (6th & J/L, 7th & K)**  
\$0.75 ea. 1/2 hr. for first 2 hrs.  
\$1.25 ea. additional 1/2 hr.  
\$13.00 daily maximum charge

**Lot P (2nd & I)**  
\$0.75 ea. 1/2 hr. for first 3 hrs.  
\$1.00 ea. additional 1/2 hr.  
\$12.00 daily maximum charge

**Lot U (5th & J)**  
\$0.50 ea. 1/2 hr. for first 2 hrs.  
\$1.00 ea. additional 1/2 hr.  
\$12.00 maximum charge

**Lot W (2nd & I St.)**  
\$5.00 flat rate

## Enclosure 1

### INFORMATION CONCERNING APPEARANCE AT WATER RIGHT HEARINGS

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 Resources Control Board (SWRCB) is available upon request or may be viewed at the SWRCB's web site:  
[http://www.swrcb.ca.gov/water\\_laws/](http://www.swrcb.ca.gov/water_laws/).

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 petitioners and persons or entities who have filed unresolved protests or objections, 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 who 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 a Notice of Intent to Appear and two copies thereof which must be received by the SWRCB no later than **4:00 p.m. on Monday, November 18, 2002**. Failure to submit a Notice of Intent to Appear and exhibits in a timely manner may be interpreted by the SWRCB as intent not to appear.

The Notice of Intent to Appear must state the name and address of the participant; and if the participant is a party or desires to be recognized as a party, the name of each witness who will testify on the participant's behalf; a brief description of the proposed testimony; and an estimate of the time, not to exceed 20 minutes, that the witness will

take to present a brief oral summary of the witness's testimony. The witness's testimony must be submitted in writing as described in section 4 below. Participants should indicate how they intend to participate in the hearing by marking the appropriate box on the Notice of Intent to Appear. 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 SWRCB 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 SWRCB encourages participants to submit written policy statements, written opening statements, written testimony, exhibits, and Exhibit Identification Indexes to the SWRCB in electronic form. In addition, participants may exchange the foregoing documents in electronic form. Hearing participants are not required to either 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.

Following receipt of the Notices of Intent to Appear, the SWRCB will mail to each participant who has submitted a notice a service list of participants. The service list will indicate which participants agreed to accept electronic service. No later than **4:00 p.m. on Monday, December 9, 2002**, each participant shall serve a copy of its Notice of Intent to Appear on each of the participants identified on the service list and shall also serve on the SWRCB and the participants on the service list a statement of service that indicates the manner of service. If there is any change in the hearing schedule, only those persons or entities who 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.<sup>1</sup> Written testimony shall be designated as an exhibit, and must be submitted with the other exhibits. Oral testimony that goes beyond the scope of the written testimony may be excluded. A 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 SWRCB either: (1) 12 paper copies of each of its exhibits or (2) two 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

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<sup>1</sup> 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.

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 SWRCB and serve on the other participants a completed Exhibit Identification Index. If possible, each participant should submit to the SWRCB 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 SWRCB by **4:00 p.m. on Wednesday, December 18, 2002**, 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 officer has discretion to receive in evidence by reference relevant, otherwise admissible, public records of the SWRCB 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 SWRCB 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 SWRCB 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 SWRCB'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.
  - 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 SWRCB 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 SWRCB and served on the other parties, unless the hearing officer specifies 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 97 (preferred) or Word 97. Electronic submittals to the SWRCB of documents less than 5 megabytes in size may be sent via electronic mail to: [WrHearing@waterrights.swrcb.ca.gov](mailto:WrHearing@waterrights.swrcb.ca.gov) with **subject of “Hearing on SJRGA Petitions.”** Electronic submittals to the SWRCB of documents greater than 5 megabytes in size should be sent by mail, in PDF format, on ZIP™, JAZ™, or compact disk (CD™) media. Electronic service on participants shall be in the same format as submittals to the SWRCB, but 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 SWRCB. 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 SWRCB will post a list of all exhibits submitted for the hearing on its website at <http://www.waterrights.ca.gov/hearings>.

6. **ORDER OF PROCEEDING:** The SWRCB 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. The time limits specified below may be changed by the Hearing Officer, at his discretion, as a result of the pre-hearing conference.
  - a. **Policy Statements:** Pursuant to California Code of Regulations, title 23, section 648.1, subdivision (c), the SWRCB will provide an opportunity for presentation of nonevidentiary 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 the 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 SWRCB 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 officer.
  - 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.<sup>2</sup> Each participant will be allowed up to two hours total to present all of its direct testimony.<sup>3</sup>
  - iii. **Cross Examination:** Cross examination of a witness will be permitted on the party's written submittals, the witness' oral testimony, and other relevant matters. If a participant presents multiple witnesses, the 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 the 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 the hearing officer may allow a participant to designate a person technically qualified in the subject being considered to examine a witness. SWRCB members and the SWRCB's counsel may ask questions at any time, and the SWRCB 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

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<sup>2</sup> 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.

<sup>3</sup> 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.

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 decides to request briefs, the briefs will be due no earlier than 30 days after the estimated date of availability of the Reporter's Transcript. If the hearing officer authorizes the participants to file briefs, 12 copies of each brief shall be submitted to the SWRCB, 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.
- 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. **AUDIO-VISUAL EQUIPMENT:** Participants who require Audio-Visual Equipment for their presentations should contact the Division one week prior to the first day of hearing to make arrangements with staff.
- 8. **EX PARTE CONTACTS:** During the pendency of this proceeding, commencing no later than the issuance of the Notice of Hearing, there will be no *ex parte* communications between SWRCB members or SWRCB staff and any of the participants regarding substantive issues within the scope of the proceeding. (Gov. Code, §§ 11430.10-11430.80.) Communications regarding noncontroversial procedural matters are permissible, but ordinarily should be directed to SWRCB staff, not SWRCB members. (Gov. Code, § 11430.20, subd. (b).)
- 9. **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.

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10. **SUBMITTALS TO THE SWRCB:** Notices of Intent to Appear, written testimony and other exhibits submitted to the SWRCB should be addressed as follows:

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

**Attn: Diane Lawson**

**Phone: (916) 341-5297 Fax: (916) 341-5400**

**Email: [WrHearing@waterrights.swrcb.ca.gov](mailto:WrHearing@waterrights.swrcb.ca.gov)**

**With Subject of “Hearing on SJRGA Petitions”**



Exhibit Identification Index

Participant \_\_\_\_\_

Exhibit No.	Description	Status as Evidence		
		Introduced	Accepted	By Official Notice