



Winston H. Hickox
*Secretary for
Environmental
Protection*

State Water Resources Control Board

Executive Office

901 P Street • Sacramento, California 95814 • (916) 657-1951
Mailing Address: P.O. Box 2000 • Sacramento, California • 95812-2000
FAX (916) 657-1485 • Web Site Address: <http://www.swrcb.waterrights.ca.gov>



Gray Davis
Governor

NOTICE OF PUBLIC HEARING

**Petitions to Change Place of Use and Purpose of Use
For Water Right Permits 1267, 1268, 1271, 2492
of Oroville-Wyandotte Irrigation District (OWID)
And Water Right Permits 11516 and 11518 of
OWID and Yuba County Water District (YCWD)**

**And Petitions for Extension of Time For
Water Right Permits 11516 and 11518 of
OWID and YCWD**

9:00 a.m., October 16, 17 and, if necessary, October 18, 2000

**State Water Resources Control Board
Paul R. Bonderson Building
901 P. Street, First Floor Hearing Room
Sacramento, CA 95814**

SUBJECT OF HEARING

The purpose of this hearing is for the State Water Resources Control Board (SWRCB) to receive evidence relevant to determining whether to approve the petitions for changes and time extensions for the projects authorized by the permits identified above. Oroville-Wyandotte Irrigation District (OWID) has filed change petitions to add municipal and industrial uses as authorized purposes of use under all six permits, and has petitioned to consolidate its place of use under the six permits to cover its present service area boundaries. In addition, OWID has petitioned for an extension of time to complete application of water to beneficial use under Permits 11516 and 11518. Water Code section 1410 authorizes revocation of a permit if, after a hearing on a petition for extension of time to complete a project and apply water to beneficial use, the SWRCB finds that cause exists to revoke the permit.

Yuba County Water District (YCWD) has petitioned to modify Permit 11518 to add Yuba City to the authorized place of use under the permit and to add a point of diversion and rediversion on the Feather River near Yuba City.

BACKGROUND

OWID has developed a multiple-purpose water development project, which generates hydroelectric power under separately held water rights that are not part of the petitioned changes. The OWID project commingles water released from storage with flows that are directly diverted at the dams. OWID has constructed seven reservoirs on the South Fork Feather River and

tributary streams and on Slate Creek, a tributary to the North Yuba River. Three of the seven reservoirs were built under the permits identified above. One of the authorized facilities, the New York Flat Reservoir, has not been built.

The 94,700 acre-foot (af) capacity Little Grass Valley Reservoir stores water from the South Fork Feather River. The South Fork Diversion Dam is located 8.5 miles downstream of Little Grass Valley Reservoir and intercepts reservoir releases and natural flows, conveying the water 2.5 miles in a tunnel to the upper end of the 65,600 af capacity Sly Creek Reservoir on Lost Creek. The portion of flows that is not intercepted at the South Fork Diversion Dam continues downstream into the 352 af capacity Forbestown Reservoir, thence continues downstream to the 4,750 af capacity Ponderosa Reservoir.

Water exiting the Ponderosa Reservoir either continues downstream to Lake Oroville (a Department of Water Resources facility) or is directed into Miners Ranch Canal, which terminates in the 815 af capacity Miners Ranch Reservoir. Water leaving the Miners Ranch Reservoir is directed to (1) Bangor Canal, (2) a domestic distribution system, or (3) Kelly Ridge tunnel and penstock.

Sly Creek Reservoir receives water from four sources. Lost Creek and Sly Creek contribute water to the reservoir, in addition to water imported from South Fork Feather River and Slate Creek. Slate Creek flows are intercepted by the Slate Creek Diversion Dam, and conveyed via a 2.5 miles tunnel to Sly Creek Reservoir.

Water flows from Sly Creek Reservoir into the 5,920 af capacity Lost Creek Reservoir located immediately below Sly Creek Dam. Flows exiting Lost Creek Reservoir can be directed to the South Fork Feather River, where the water flows into the Forbestown Reservoir, thence Ponderosa Reservoir. Alternatively, the water can be directed from Lost Creek Reservoir into the Forbestown Ditch for consumptive use. A turn-out from the Forbestown Ditch is used to deliver water to YCWD. The Forbestown Ditch flows into the 350 af capacity Lake Wyandotte. OWID diverts water from Lake Wyandotte to serve its customers in the Lost Horizon Drive area.

Petitioned Changes:

On June 7, 1982, YCWD filed a petition for change in place of use to add Yuba City to its place of use under Permit 11518 and to add municipal use to the purposes of use authorized in the permit. Yuba City diverts water from the Feather River, roughly 50 miles downstream of Lost Creek Reservoir (the furthest downstream point of diversion under Permit 11518).

On March 8, 1989, OWID filed petitions to enlarge the place of use authorized under its permits. The petitions were modified on May 19, 2000, to request that OWID's place of use under all six permits be consolidated to reflect OWID's present boundaries. OWID also petitioned to add municipal and industrial purposes of use to all six permits.

The time to complete construction under Permits 11516 and 11518 ended on December 1, 1964, and the time to complete beneficial use ended on December 1, 1975. On March 10, 1980, OWID, on behalf of both districts, filed petitions for extension of time. The petitions request an extension of time to develop full beneficial use of water. Notice of the petition was issued in

1980, and again in 1991. The SWRCB has not yet acted upon the petitions. Due to the passage of time, the SWRCB issued further public notice of the petitions for changes and time extension on July 19, 2000. Supplemental information provided by YCWD on August 17, 2000, identifies the proposed new point of diversion and rediversion on the Feather River.

Protests:

The California Sportfishing Protection Alliance (CSPA) protest asserts that the water rights for New York Flat Reservoir (Permit 1268) should be revoked because the facility has not been built. CSPA also asserts that increased water use by the project would have an adverse impact upon recreation and maintenance of a cold water pool at Lake Oroville but did not submit a statement of facts in support of that allegation.

OWID protested YCWD's petition to add Yuba City to the place of use of Permit 11518 on the following basis:

- The two districts are co-permittees, and any petition should be consented to or joined in by both entities.
- Permit 11518 refers to the December 9, 1959, agreement between OWID and YCWD. That agreement limits use to the area within the Yuba County. Yuba City is in Sutter County.
- The release from priority granted by the California Water Commission and by the Department of Water Resources (as predecessor to the SWRCB) to OWID and YCWD for Application 14113 refers to a March 21, 1958, agreement and any amendments to the agreement mutually agreed upon by the districts. OWID has not agreed to change the service area.
- If the petition is granted and YCWD delivers water to Yuba City, that water will not be available to OWID at the outlet of Kelly Ridge Powerhouse.

YCWD protested OWID's petition for change to enlarge the place of use on the basis of potential reduction in water availability to YCWD. However, in accordance with the provisions of part II E of the December 9, 1959, agreement, YCWD does not protest enlargement of the place of use under Permits 11516 and 11518 to include land that is located within Butte County and also within OWID's boundaries. YCWD states that its protest could be resolved by providing sufficient water to YCWD to satisfy its present and projected future water needs.

Previous SWRCB Determinations:

On October 9, 1992, the executive director of the SWRCB, acting pursuant to a delegation of authority from the SWRCB entered an order approving temporary changes involving a transfer of water under Permits 1267 and 2492. Finding 6.3 of that order states that the executive director will recommend that SWRCB should not approve change petitions to add Yuba City to the place of use of OWID or YCWD until the two districts have reached agreement or taken other action to clarify their relative rights and duties with respect to their jointly held water right permits.

KEY ISSUES

1. Should the SWRCB approve the petitions for change in purpose and place of use for:
 - a. addition of municipal and industrial purposes of use to all the subject permits;

- b. enlargement of the OWID service area under Permits 1267, 1268, 1271, 2492, 11516 and 11518 ;
- c. enlargement of the YCWD service area under Permit 11518 to include Yuba City, and addition of a point of diversion/rediversion at Yuba City?

Is approval of the petitions consistent with the terms of the districts' existing water supply agreement? Should any special terms or conditions be included in the permits to reflect the provisions of the water supply agreement? What terms and conditions, if any, should the SWRCB add to the permits to address the effects of the proposed changes on other users or uses or water?

2. Should the SWRCB approve the petitions for extension of time for Permits 11516 and 11518? If the SWRCB grants an extension of time, what conditions should be included to protect the public interest? If the time extension petitions are approved, what period of time is appropriate for completion of the project?

If the SWRCB does not approve an extension of time, should the SWRCB find that there is cause to revoke, in part or in full, Permits 11516 and 11518?

- a. Permit 11516 authorizes storage of 35,000 afa in Sly Creek and Slate Creek Reservoirs. What quantity of water, if any, has been diverted to storage in these facilities and placed to beneficial use pursuant to the provisions of Permit 11516?
- b. Permit 11516 authorizes direct diversion of 300 cfs. What quantity of water, if any, has been directly diverted and placed to beneficial use pursuant to the provisions of the Permit 11516?
- c. Permit 11518 authorizes storage of 117,300 afa in Little Grass Valley, Sly Creek and Lost Creek Reservoirs. What quantity, if any, has been diverted to storage in these facilities and placed to beneficial use pursuant to the provisions of Permit 11518?
- d. Permit 11518 authorizes direct diversion of 700 cfs. What quantity of water, if any, has been directly diverted and placed to beneficial use pursuant to the provisions of Permit 11518?

If Permit 11516 or 11518 is partially or fully revoked, what effect will such action have on water availability to YCWD? Should any actions be taken to address effects on YCWD? If so, what action is appropriate?

3. What actions, if any, should be taken to clarify the relative rights and duties of OWID and YCWD with respect to their water right permits? Should the SWRCB delete the permit condition in Permits 11516 and 11518 referencing the water supply agreement between OWID and YCWD? If so, should the SWRCB amend the permit to include other conditions? What other conditions may be appropriate?
4. Should the SWRCB revoke authorization to store 40,000 afa in New York Flat Reservoir under Permit 1268 due to failure to construct the facility and put water to beneficial use?
5. What is the status of the environmental documentation for the actions requested by the petitioners?

6. Will approval of the petitions result in adverse impacts to public trust resources? What conditions, if any, should the SWRCB adopt to avoid or mitigate any adverse impacts on public trust resources that would otherwise occur as a result of approval of the petitions?

HEARING PARTICIPATION

All persons who plan to participate in this hearing should carefully read the enclosure entitled “Information Concerning Participation in Hearing on Water Rights”. 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 Board on or before **4:00 P.M. September 25, 2000**. Questions concerning this notice may be directed to **Katherine Mrowka at (916) 657-1951 or Dan Frink at (916) 657-2104**. FAX #(916)657-1485.

PARKING AND ACCESSIBILITY

The [enclosed map](#) shows the location of the Paul R. Bonderson building in Sacramento. Public parking is available in the State Garage on 10th Street between O and P Streets, in metered spaces on area streets, and in the public garages on L Street between 10th and 11th Streets and on P Street between 11th and 12th Streets.

The Paul R. Bonderson Building first-floor hearing room is accessible to persons with disabilities.

ORIGINAL SIGNED BY:

Maureen Marché
Administrative Assistant to the Board

Enclosures

Date: September 12, 2000

Mailing List

Mr. Michael C. Glaze
Oroville-Wyandotte Irrigation District
P.O. Box 581
Oroville, CA 95965-0581

Robert J. Baiocchi
California Sportfishing Protection Alliance
P.O. Box 1790
Graegle, CA 96103

Mr. Dennis Parker
Yuba County Water District
P.O. Box 299
Brownsville, CA 95919

Mr. Alan Lilly
Bartkiewitz, Kronick & Shanahan
1011 22nd Street, Suite 100
Sacramento, CA 95816

Mr. James C. Hanson
Hanson Engineers
444 North Third Street, Suite 400
Sacramento, CA 95814

Mr. Jeff Meith
Minasian Law Offices
P.O. Box 1679
Oroville, CA 95965-1679

Mr. Dan Gallery
Law Offices of Dan Gallery
916 J Building, Suite 505
Sacramento, CA 95814

Mr. Steve Grinell
Bookman Edmondson Engineering
3100 Zinfandel Drive, Suite 600
Rancho Cordova, 95670

Staff Exhibits:

SWRCB staff will offer the following documents will into evidence as exhibits by reference:

1. Files on Application 1651 (Permit 1268) – application, permit, orders, inspection reports, reports of permittee, petitions and all correspondence related to the petitions.
2. Files on Application 2142 (Permit 1268) – application, permit, orders, inspection reports, reports of permittee, petitions and all correspondence related to the petitions.
3. Files on Application 2979 (Permit 1271) - application, permit, orders, inspection reports, reports of permittee, petitions and all correspondence related to the petitions.
4. Files on Application 2778 (Permit 2492) - application, permit, orders, inspection reports, reports of permittee, petitions and all correspondence related to the petitions.
5. Files on Application 13957 (Permit 11516) - application, permit, orders, inspection reports, reports of permittee, petitions and all correspondence related to the petitions.
6. Files on Application 14113 (Permit 11518) - application, permit, orders, inspection reports, reports of permittee, petitions and all correspondence related to the petitions.
7. SWRCB Order on Temporary Transfer under Permits 1267 and 2492 dated October 9, 1992.
8. March 22, 1985, Negative Declaration prepared by Yuba City for the proposed water delivery from OWID and YCWD of up to 35,000 afa.
9. Negative Declaration (SCH #92063071) adopted June 24, 1997, by OWID for Expansion of Place of Use and Related Actions for Applications 1651, 2142, 2778, 2979, 13957 and 14113.
10. U.S. Geological Survey Hydrologic and Climatologic Information for the North Fork Yuba River, South Fork Feather River and Feather River (including tributaries) within Butte, Plumas, Sutter and Yuba counties.

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. **PARTIES:** The parties are the petitioners, persons who have filed unresolved protests, and other persons authorized by the hearing officer to participate as parties. Only parties who are recognized as parties will be allowed to present evidence. A person or entity who appears and presents only a policy statement will not be considered a party. The rules for policy statements are discussed below.

2. **NOTICE OF INTENT TO APPEAR:** Each party intending to participate must submit to the SWRCB and to each of the other parties the name of each witness who will testify in such party's behalf, together with certain other information. Parties who wish to participate in this hearing must file a Notice of Intent to Appear and six copies thereof which must be received by the SWRCB no later than **4:00 p.m. on September 25, 2000**. Following receipt of the Notices of Intent to Appear, on or about **September 27, 2000**, the SWRCB will mail a service list of parties to each person who has submitted a notice. No later than **October 4, 2000**, each party shall serve a copy of its Notice of Intent to Appear on each of the parties identified on the service list along with a statement of service that indicates the manner of service. If there is any change in the hearing schedule, only those persons who have filed a Notice of Intent to Appear will be informed of the change.

Before **4:00 p.m. on October 4, 2000**, parties who have filed a Notice of Intent to Appear and do not intend to present a case in chief during this hearing, but who may wish to cross-examine witnesses or present rebuttal are requested to notify the SWRCB in writing, with copies to the other parties, of their intention to participate. In the absence of such notice, failure to submit witness information and exhibits in a timely manner may be interpreted by the SWRCB as intent not to appear.

3. **WRITTEN TESTIMONY AND OTHER EXHIBITS:** Each party proposing to present testimony on factual or other evidentiary matters at the hearing shall submit such testimony in writing. Each piece of written testimony is, and shall be treated 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.

Each party shall submit six copies of each of its exhibits and six copies of a completed Exhibit Identification Index to the SWRCB and serve a copy of each exhibit and index on every party on the service list. Exhibits include written testimony, statements of qualifications of witnesses, and other documents to be used as evidence. A statement of service with manner of service indicated shall be filed with each party'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 October 4, 2000** and served on the other parties by mail on or before that date.

If possible, Exhibit Identification Indexes should be supplied to the SWRCB and other parties electronically on a disk or as an attachment to electronic mail sent to WrHearing@waterights.swrcb.ca.gov, with the subject heading of "OWID/YCWD Hearing on Petitions for Change and Time Extension" in addition to paper copies. The electronic copy of the Exhibit Identification List must be in a version supported by Microsoft Excel (preferred) or Microsoft Word 97. The SWRCB will post a list of all exhibits submitted for the hearing on its website at <http://www.waterights.ca.gov/hearings>.

The Status as Evidence column in the Exhibit Identification Index will be completed by the SWRCB during the hearing. Written testimony and statements of witness qualifications are considered exhibits.

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 party offering an exhibit by reference shall advise the other parties and the SWRCB of the titles of the documents, the particular portions, including page and paragraph numbers, on which the party 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 party seeking to enter in evidence as an exhibit a voluminous document or database may so advise the other parties prior to the filing date for exhibits, and may ask them to specifically respond if they wish to have a copy of the exhibit. If the other parties waive the opportunity to obtain a copy of the exhibit, the party offering the exhibit will not be required to provide copies to the other parties. Additionally, such exhibits may be submitted to the SWRCB in electronic form, using a file format readable by Microsoft Office 97 software.
 - d. Exhibits that rely on unpublished technical documents will be excluded unless the unpublished technical documents are admitted as exhibits.
4. **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. Parties 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(d), the SWRCB will provide an opportunity for presentation of nonevidentiary policy statements or comments by interested persons who are not participating as parties. Policy statements will be heard at the start of the hearing, immediately after the hearing officer identifies the parties. 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. 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 party may present a case in chief addressing the key issues identified in the hearing notice¹. The case in chief will consist of any opening statement provided by the party, oral testimony, introduction of exhibits, and cross examination of the party's witnesses. The hearing officer may allow redirect examination and recross examination.
 - i. **Opening Statements:** At the beginning of a case in chief, the party or the party'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 party. A party may submit a written opening statement. Any policy-oriented statements by a party should be included in the party'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 examination². Each party will be allowed up to two hours total to present all of its direct testimony.
- ii. **Cross Examination:** Cross examination of witnesses will be permitted on the written submittals and any oral testimony. If a party presents multiple witnesses,

¹ A party is not required to present evidence. Parties not presenting evidence will be allowed to participate through cross-examination, proper rebuttal, and presentation of opening and closing statements or briefs.

² The hearing officer may make an exception to this rule if the witness is adverse to the party 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 and may allow additional time for the oral direct testimony of the witness if the hearing officer is satisfied that the party could not produce written direct testimony for the witness.

the party'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.

- c. **Rebuttal**: After all parties have presented their cases in chief and their witnesses have been cross-examined, the hearing officer will allow parties to present rebuttal evidence. Rebuttal evidence is new evidence used to rebut evidence presented in another party's case in chief. New witnesses and exhibits may be presented during rebuttal without previous notice. 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 parties to file briefs, 6 copies of each brief shall be submitted to the SWRCB, and one copy shall be served on each of the other parties on the service list. A party 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 party filing a brief shall file a statement of service with the brief, indicating the manner of service.
5. **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 board members or staff of the SWRCB and any of the parties regarding substantive issues within the scope of the proceeding. (Gov. Code § 11430.10.) Communications regarding noncontroversial procedural matters will be permissible, but ordinarily should be directed to SWRCB staff, not board members. (Gov. Code § 11430.20(b).)
 6. **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 may be viewed at the Division of Water Rights' web site: <http://www.waterrights.ca.gov/Title23Regs.htm>. Copies will also be provided upon request. Evidence will be admitted in accordance with Government Code section 11513.

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. Board members and the Board's counsel may ask questions at any time, and the Board members and staff may cross examine any witness. Ordinarily, only the party or the party's representative will be permitted to examine witnesses, but the hearing officer may allow the party to designate a person technically qualified in the subject being considered to examine a witness.

Parties shall file their requests in writing when seeking exceptions to procedural requirements. To provide time for other parties 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.

Materials submitted to the SWRCB should be addressed as follows:

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

With Subject of "OWID/YCWD Hearing on Petitions for Change and Time Extension"

Exhibit Identification Index

Participant _____

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