

State Water Board 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)

Statement of Michael Warburton
Executive Director
Public Trust Alliance

Good morning, I'm Michael Warburton, Director of the Public Trust Alliance, a project of the non-profit Resource Renewal Institute. From the local level, we work with communities to defend public rights in our most precious natural heritage, and, on the more rarified policy plane, we work with State Trustees to encourage wiser stewardship of the natural systems that ultimately support us all. Our driving mission is ensuring that there will be enough clean air to breathe and pure water flowing in our rivers to support equitable opportunities for healthy lives for future generations. Our main strategy is letting people know that it is actually their own water that is being talked about in public planning processes and to make sure that these trust interests are adequately defended. Even more important, especially for this particular proceeding, is to ensure that there are adequate safeguards to ensure that the trust itself is not undermined and unjustified expectations and assumptions are not formed by inadequately explained compromise deals made by people and organizations who may or may not have the right to bargain away paramount public rights.

With all the confusing manipulations and conflicts of interest always involved in public water management, complete with revolving doors enabling career paths where key public negotiators are immediately hired by private actors with deeply vested interests in opposing viewpoints, and scientists and their political handlers actively offering biased opinions to the highest bidder, it's important to make sure that public interests are explicitly acknowledged and openly considered whenever water rights are adjusted. That's why this hearing is so important: to protect public credibility and trust that can support policy action. Our main concern here is to see that there are adequate safeguards for trust interests in this transfer and that the trust itself isn't undermined by particular aspects of the agreement, or that this particular deal might be inappropriately set up to be used as a model, in very different circumstances, for future unquestioned initiatives to sell public water to the highest bidder. In order to be publicly credible, parties with an affirmative legal duty to defend trust interests have to be present and active in the discussion which happens here.

Maybe a better way of introducing myself is as the father of a little girl who will be growing up either with rivers that support healthy populations of fish or an increasingly degraded environment not capable of supporting much of anything. I'm worried about her. I grew up with geography text books that showed continuous blue lines to signify the major rivers in California and major blue shadings to indicate water bodies like Owens Lake. I actually thought that blue color on the maps used by respected

community leaders actually indicated the continuous presence of water. It was only many years later, and with a good deal of effort on my own part that I learned there hadn't been actual water in some of these places for years even well before the maps were published for public use. In law school I learned that the waters of California belong to the people of the state, yet, there are an awful lot of instances where funny math has benefited a very few people and corporations at more general cost to the people of the state. We are all functioning here with a background of very limited public understanding of the mechanics and institutional contexts shaping water allocation in California. Yet some of the parties here have privileged connections to what actually happens on the ground in California. What is happening here is that the public is paying for an increment of water for legally protected purposes while other interested parties continue to receive water for their private uses at almost zero cost. I am concerned about the circumstances of co-mingling Federal and State Water and expanding the place of use to include combined service areas for much larger projects that support a variety of other uses. Will this be an ever widening door to losing track of how water is used before we have even understood how much water has been historically used in the first place?

Knowing actual amounts of water used will be increasingly important in shaping responsible adaptations to changing precipitation and runoff patterns that will come with climate change. And, in many ways, it will be the adaptive capacity to be found in legal protection of public rights and responsibilities that will be key to fashioning responsible strategies for dealing with the impacts of climate change. When long term public interests are recognized and protected, we can avoid the paralysis and chaos created when a few powerful private interests fight to preserve increasingly bizarre claims to short term economic gains. That's another reason to be even more careful about assuring the protection of public rights.

Yet, right up to deadlines for submitting notices of intent and testimony for this hearing, I've been surprised and confused about what parties will actually be available to present unconflicted representation for crucial public trust interests. The State Board itself has affirmative duties as a trustee, but it appears committed to presenting itself as a dispassionate adjudicator, leaving the advocacy role to other parties. A long process and extensive scientific testimony has led to the petition at bar. Yet the parties and their arguments seem to be changing form and dropping out at key turns. Downstream water users concerned about water quality implications of this deal withdrew a protest right before the hearing. An irrigation district intent on padding its historical use and with a vested interest in future sales ventured a last minute argument that might upset and reopen the work leading toward the adoption of D-1644. And it wasn't clear if the only party explicitly mentioning the trust would be excluded through non-appearance at the pre-hearing conference. Additional testimony was encouraged from DWR, but its conflicting roles as a project operator and its historic closeness to contractors (including instances of behind closed-door meetings without public advocates present and later announcements of decisions negatively impacting public rights) may not be enough to inspire public confidence. And then, the California Department of Fish and Game, the key public trustee protecting fundamental public interests is appearing here only to present a policy statement and won't be available for independent representation of

public interests when it might be needed. My own organization is a late arrival and certainly doesn't have the resources or local experience other parties have devoted to this process. But we do want to make sure that fundamental state trust interests are protected.

We don't want Federal authorities telling us that this is a "slam dunk" from a current administration perspective of privatizing public assets and leaving California to abandon its trust duties. I think we have to pay close attention to shaping the terms of water transfers such as this, where the public buys its own water back from private interests to support the very public uses that were intended to be protected in the first place. The issue of ownership of California water and what different parties can expect when they "buy" it makes this agreement a very tricky step part way down a very slippery slope. We've got to preserve and enhance recognition of the public rights and responsibilities involved. And to extend the metaphor into possibly more abstract territory, in seeing the situation as a tricky step on a mountain climbing expedition, it's the trust in the people holding the rope that makes forward progress possible. I am participating in this hearing to make sure that public trust considerations are protected at every point they should be as more water is moved toward natural uses at key points of the year. I look forward to hearing the presentations and advocacy of the trustee agencies who are legally charged with this responsibility.