

State Water Resources Control Board

Division of Water Rights

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NOTICE OF PUBLIC HEARING

The State Water Resources Control Board will hold a hearing on
Natomas Central Mutual Water Company's Petition for a Temporary Water Transfer
Licensed Applications 534, 1056, 1203, 1413, 15572, and 22309

Monday, 10:00 a.m., August 16, 1999

and if necessary

Tuesday, 9:00 a.m., August 17, 1999

First-Floor Hearing Room

Paul R. Bonderson Building

901 P Street

Sacramento, CA

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SUBJECT OF HEARING

The purpose of this hearing is to receive information, which should be considered by the State Water Resources Control Board (SWRCB) prior to adoption of an order regarding the following main issues:

1. Is the amount of water that is proposed to be transferred water that would have been conserved in accordance with Water Code section 1011?

2. Is the water that is proposed to be transferred water that would have been consumptively used or stored in the absence of the transfer?
3. Will the proposed transfer of water injure any legal user of the water?
4. Will the proposed transfer unreasonably affect fish, wildlife, or other instream beneficial uses?

BACKGROUND

On April 26, 1999, Natomas Central Mutual Water Company (Natomas) in cooperation with Western Water Company (WWC) petitioned for a temporary transfer of water under Water Code section 1725. If approved, the temporary change will be effective for a period of one year or less.

The Petition was publicly noticed by the SWRCB on May 17, 1999. Timely objections were filed by three parties: California Department of Water Resources (DWR), U.S. Bureau of Reclamation (USBR) and State Water Project Contractors (SWPC). Natomas modified its petition by letters dated June 21, 1999 and July 20, 1999. The Division met with Natomas on several occasions to discuss the proposed transfer and the information Natomas had provided. The Division of Water Rights was unable to make the necessary findings to approve the transfer, therefore a hearing is required by the SWRCB.

Natomas holds several water rights used primarily for irrigation purposes. Between 1981 and 1986 Natomas constructed and implemented water management measures in an effort to reuse water within its service area. Natomas has implemented modified water management and agricultural practices including reduction in incidental transportation losses, laser leveling of fields, crop rotation, lining of canals, reuse of tailwater and other actions. According to Natomas's letters dated June 21, 1999 and July 20, 1999 it has conserved an average of approximately 8,860 AF per year. Natomas proposes to transfer the water that it claims to have conserved.

Natomas has secured a commitment from the Santa Margarita Water District (Santa Margarita) to purchase the transferred water. Natomas proposes to expand the existing place of use under its licenses to allow use of water in Santa Margarita's service area. In addition, Natomas proposes to change the existing purpose of use to include municipal and industrial uses. The proposed point of diversion for this transfer is the State Water Project's point of diversion at the Harvey O. Banks Pumping Plant.

Natomas's Water Rights

The licensed applications held by Natomas that will be affected by this transfer are: A534, A1056, A1203, A1413, A15572, and A22309. The affected licensed applications are for direct diversion from the Sacramento River and Attachment 1 summarizes Natomas's water rights involved in the proposed temporary transfer. Additionally, Natomas also holds Contract No. 12-06-200-885A with the U.S. Bureau of Reclamation.

Compliance with California Environmental Quality Act

Temporary changes under Water Code sections 1725 et seq. are exempt from the requirements of the California Environmental Quality Act (CEQA) (Water Code section 1729). However, the SWRCB must consider potential impacts to other legal users of the water and to fish, wildlife, or other instream beneficial uses.

Relevant Statutory Provisions

Pursuant to Water Code section 1011, subdivision (b), water, or the right to the use of water, the use of which has ceased or been reduced due to conservation, may be transferred pursuant to any provision of law relating to transfers. Temporary transfers may be made pursuant to Water Code sections 1725 et seq.

KEY ISSUES

1. Are the water rights that are the subject of Natomas's proposed temporary transfer adequate to support the transfer?
 - a. What are the limits on each of Natomas's water rights that are the subject of the transfer, including the maximum amount that may be diverted, the season of diversion, and the maximum rate of diversion?
 - b. How does the amount of water that may be appropriated under these rights vary based on different hydrologic conditions?
 - c. Based on Natomas's water rights, what would be the appropriate amount, season, and rate of any diversions made pursuant to the transfer?
2. Was the amount of water proposed to be transferred conserved in accordance with Water Code section 1011?
 - a. If Natomas made water conservation efforts, what types of water conservation efforts were made and when were they implemented?
 - b. To what extent did Natomas conserve water within the meaning of Water Code section 1011 as a result of water conservation efforts?
 - c. Did the periodic reports of water conservation filed by Natomas with the SWRCB meet the requirements of Water Code section 1011, subdivision (a)?
 - d. Did Natomas forfeit through nonuse pursuant to Water Code section 1241 any of its claimed water rights and, if so, to what extent?
3. Would the amount of water proposed to be transferred be consumptively used or stored in the absence of the transfer? (Wat. Code, § 1725.)

a. To what extent is Natomas reducing its consumptive use, as defined in section 1725, as a result of water conservation efforts under Water Code section 1011, and may water savings from efforts ongoing in the year of the transfer be transferred pursuant to Water Code section 1725?

b. Does the fact that Natomas implemented its water conservation efforts over a decade ago affect Natomas's ability to transfer conserved water pursuant to Water Code section 1725?

c. Is the amount of conserved water that may be transferred pursuant to Water Code section 1725 limited to the reduction in "consumptive use," as defined in Water Code section 1725?

5. Would the proposed transfer injure any legal user of the water proposed to be transferred during any potential hydrologic condition, through resulting significant changes in water quantity, water quality, timing of diversion or use, consumptive use, reduction in return flows, or reduction in the availability of water within the watershed in which Natomas is located? (Wat. Code, § 1727, subd. (a)(1).)
6. Would the proposed transfer unreasonably affect fish, wildlife, or other instream beneficial uses? (Wat. Code, § 1727, subd. (a)(2).) In particular, would diversions at the proposed new point of diversion at the Harvey O. Banks pumping facility unreasonably affect fish, wildlife, or other instream beneficial uses?

HEARING PARTICIPATION

PLEASE NOTE: All those persons who plan to participate in this hearing should read carefully the enclosure entitled "Information Concerning Appearance at Water Right Hearing." As stated in that enclosure, parties intending to participate as parties and 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 July 30, 1999.**

The SWRCB will mail out a list of parties to exchange information compiled from the Notices of Intent to Appear. The parties must serve a copy of their Notice of Intent to Appear, along with any exhibits, on the other parties on the list of parties to exchange information by **August 9, 1999.** In addition, six copies of each exhibit must be submitted to and received by the SWRCB by **4:00 p.m. on August 9, 1999.**

PARKING AND ACCESSIBILITY

The enclosed map shows the locations of the Paul R. Bonderson building and public parking sites in Sacramento. There are limited metered parking spaces on local streets.

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

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IF YOU HAVE ANY QUESTIONS

Questions concerning this notice may be directed to Patricia Meroney, Engineering Associate, at (916) 657-1868 or Dana Differding, Staff Counsel, at (916) 657-2086.

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Maureen Marche'

Administrative Assistant to the Board

Enclosure

Date:

**INFORMATION CONCERNING APPEARANCE AT
WATER RIGHT HEARING**

The following procedural requirements will apply to this hearing and will be strictly enforced by the SWRCB. Failure to submit witness information and exhibits in a timely manner may be interpreted by the SWRCB as intent not to appear.

1. **PARTIES:** Persons who wish to participate in the hearing as parties and present evidence must comply with the rules governing the submission of written testimony and exhibits set forth below. Persons who wish to present only policy statements must file a Notice of Intent to Appear and follow the rule governing policy statements. Persons presenting only policy statements will be considered interested persons, not parties to the hearing.
2. **NOTICE OF INTENT TO APPEAR:** Parties and interested persons must submit to the SWRCB a written Notice of Intent to Appear (form enclosed). 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.

The notice must be received by the SWRCB by **4:00 p.m. on July 30, 1999**. The notice must state the name and address of the party or interested person, or the name and address of the party's or interested person's representative. Interested persons should clearly indicate on the Notice of Intent to Appear their intent to make a policy statement only. Persons who wish to participate as parties must also include the name of each witness who will testify on the party's behalf, together with a description of the proposed testimony and the estimated

amount of time required by the witness to present an oral summary of his or her testimony, which must be submitted in writing as described in section 3, below. For each expert witness, a statement of qualifications should be attached.

Following receipt of the Notices of Intent to Appear, the SWRCB will compile and mail out a list of parties to exchange information composed of the persons who submitted a Notice of Intent to Appear. Only parties who submit a Notice of Intent to Appear will be included on the list of parties to exchange information. Each party must serve a copy of the party's Notice of Intent to Appear, along with exhibits, on all of the other parties on the list by **August 9, 1999**.

3. **WRITTEN TESTIMONY:** Each party proposing to present testimony on factual or other evidentiary matters at the hearing must submit the testimony in writing. Written testimony is, and will be treated as, an exhibit (see section 4 below). Oral testimony that goes beyond the scope of written testimony may be excluded.

4. **EXHIBITS:** Each party shall submit six copies of the party's exhibits to the SWRCB and serve one copy on each of the parties included on the list of parties to exchange information. Exhibits must be received by the SWRCB by **4:00 p.m. on August 9, 1999** and served on the other parties by mail on or before that date. A statement of service which indicates the manner of service must be included with each party's exhibits.

Each party shall also complete and submit the attached exhibit identification index along with the party's exhibits. The Status of Evidence column will be completed by the SWRCB during the course of the hearing.

5. **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 civil actions.

Public records of the SWRCB and documents or other evidence that have been prepared and published by a public agency may be submitted as exhibits by reference in accordance with California Code of Regulations, title 23, section 648.3. Among other things, the original or a copy of the document must be in the possession of the SWRCB.

6. **EX PARTE COMMUNICATION:** In accordance with Government Code sections 11430.10-11430.80, ex parte communications between SWRCB Members or SWRCB staff and any of the parties or interested persons regarding substantive issues relevant to the hearing are prohibited. Communications regarding noncontroversial procedural matters should be directed to SWRCB staff.

7. **ORDER OF PROCEEDING:** The hearing will be conducted in accordance with California Code of Regulations, title 23, section 648.5 and the following specific rules.

a. **POLICY STATEMENTS:** Policy statements will be heard first. A policy statement is a non-evidentiary statement by a person who is not a party in the hearing. It may include the speaker's policy views or non-expert analysis of evidence that already has been presented. Policy statements are not subject to the pre-hearing requirements for exhibits set forth above,

but persons intending to make a policy statement at the hearing must submit a Notice of Intent to Appear to the SWRCB that is received by **4:00 p.m. on July 30, 1999**.

Persons making policy statements will not be sworn or asked to affirm the truth of their statements, and they must not attempt to use their statements to present evidence of facts, either orally or by introduction of exhibits. At the discretion of the hearing officer, questions may be addressed to persons making only policy statements for the purpose of clarifying their statements. Persons making policy statements are not, however, subject to cross-examination.

A limit may be imposed on policy statements. Persons making policy statements are encouraged to have written copies of their statement available at the time they speak for distribution to the SWRCB.

b. OPENING STATEMENTS: All parties may make an opening statement. A time limit may be imposed on opening statements. Opening statements may also be submitted in writing. Parties should use their opening statements to explain the objectives of their case, the major points that will be made, and the relationship between the major points and the key issues. Opening statements may include any policy-oriented statements the party wishes to make.

c. PRESENTATION OF EACH PARTY'S CASE-IN-CHIEF: Each party shall present a case-in-chief addressing the key issues listed in the hearing notice. The presentation shall include all written testimony and other exhibits. The time allowed for each party's case-in-chief may be limited.

All witnesses presenting testimony must appear at the hearing, where they will be sworn and required to identify their written testimony as their own. Written testimony may not be read into the record. Witnesses will be given approximately twenty minutes to summarize or emphasize their written testimony on direct examination. The hearing officer will limit presentation of redundant testimony.

d. CROSS-EXAMINATION: Immediately following presentation of each party's case-in-chief, the party's witnesses will be subject to cross-examination by the other parties, SWRCB Members, and SWRCB staff. Witnesses may be cross-examined on subjects that were not covered in their direct testimony.

If a party presents multiple witnesses on a given subject area or closely related subject areas, those witnesses may be subject to cross-examination as a panel, at the discretion of the hearing officer. A time limit may be imposed on cross-examination.

Redirect examination and recross examination may be permitted for good cause at the discretion of the hearing officer.

e. REBUTTAL EVIDENCE: Parties will have the opportunity to present rebuttal

evidence. Parties must not use the opportunity to present rebuttal evidence to attempt to present new evidence that should have been included in the case-in-chief, or to present repetitive evidence. All rebuttal evidence will be subject to cross-examination.

f. **CLOSING ARGUMENTS:** Oral closing statements shall not be made. An opportunity will be provided for submission of written closing statements or briefs following the close of the hearing. Six copies of any closing statement or brief shall be submitted to the SWRCB and one copy shall be served on the other parties. The schedule for submission of closing statements and legal briefs will be decided by the hearing officer at the close of 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: Patricia Meroney
Phone: (916) 657-1868
Fax: (916) 657-1485
Email: pmeroney@waterrights.swrcb.ca.gov

NOTICE OF INTENT TO APPEAR

Plans to participate in the water right hearing regarding:

(name of party or participant)

NATOMAS CENTRAL MUTUAL WATER COMPANY'S
PETITION FOR A TEMPORARY WATER TRANSFER

Scheduled for

August 16, 1999 and if necessary, August 17, 1999.

I/we plan to call the following witnesses to testify at the hearing:

NAME	SUBJECT OF PROPOSED TESTIMONY	ESTIMATED LENGTH OF DIRECT TESTIMONY	EXPERT WITNESSES* (YES/NO)
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		Introduced	Accepted

STAFF EXHIBITS TO BE OFFERED INTO EVIDENCE

The following items will be offered, by reference, as staff exhibits at the August 16 and 17 1999,

Natomas Central Mutual Water Company water rights hearing.

1. All water right files related to: Applications 534, 1056, 1203, 1413, 15572 and 22309.
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.
4. U.S. Department of Commerce, National Oceanic and Atmospheric Administration, "Climatological Data of California" for the period of published record.
5. DWR Bulletin No. 230, "Index to Sources of Hydrologic Data" and all pertinent data available from the water Data Information System and all predecessor publications (Bulletins Nos. 130 and 23).
6. Water Quality Control Plan, Central Valley Region, as originally approved by the State Water Resources Control Board, and any amendments thereto.