



Linda S. Adams
Secretary for
Environmental Protection

State Water Resources Control Board

Division of Water Rights

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Arnold Schwarzenegger
Governor

NOTICE OF PUBLIC HEARING

The State Water Resources Control Board will hold a hearing on Applications 30325, 30326, 31043 and 31047 of Tejon Ranchcorp to appropriate water from Tejon and El Paso Creeks in Kern County

Commencing at 10:00 a.m. on Thursday, November 2, 2006, and continuing, if necessary, on Friday, November 3, 2006

at

**Joe Serna Jr./Cal EPA Building
1001 I Street, Sacramento
Second floor, Byron Sher Auditorium**

SUBJECT OF THE HEARING

The purpose of this hearing is to receive evidence to be considered by the State Water Resources Control Board (State Water Board) in determining whether and under what conditions Tejon Ranchcorp's (TRC or Applicant) water right Applications 30325, 30326, 31043 and 31047, should be approved.

BACKGROUND

Proposed Project Description: On December 23, 1993, TRC filed Applications 30325-30329. On April 13, 2000, TRC filed Applications 31043-31048. In March 2006, following resolution of protests against Applications 30327-30329, 31044-31046, and 31048, the State Water Board issued permits to TRC on those seven applications. Applications 30325, 30326, 31043 and 31047 to appropriate water from Tejon Creek and El Paso Creek have outstanding protests, and are the subjects of this hearing.

The projects proposed under each application are described as follows:

- Under Application 30325, TRC seeks a right to directly divert water from Tejon Creek at a maximum rate of 8 cubic feet per second (cfs) from January 1 through December 31 of each year. Under this application, TRC is also seeking a right to divert to storage 3900 acre-feet (AF), from January 1 through December 31 of each year, from Tejon Creek. The maximum total combined amount to be taken by direct diversion and diversion to storage during any one year would be 5790 AF.¹ The water will be used for stockwatering and irrigation on TRC's lands, as well as irrigation on lands of Wheeler Ridge Maricopa Water Storage District (WRMWSD) through an exchange program.
- Under Application 30326, TRC seeks a right to directly divert water from El Paso Creek at a maximum rate of 40.3 cfs, from January 1 through December 31 of each year.

¹ All water right permits that have been and may be issued to TRC under Applications 30325-30329 and 31043-31048 will have a total annual diversion cap of 15,000 AF.

Under this application, TRC is also seeking a right to divert to storage 3900 AF, from January 1 through December 31 of each year, from El Paso Creek. The maximum total combined amount taken by direct diversion and storage during any one year would be 5790 AF. The water will be used for stockwatering and irrigation on TRC's lands, as well as irrigation on lands of WRMWSO through an exchange program.

Under Application 31043, TRC seeks a right to directly divert water from El Paso Creek at a maximum rate of 8.5 cfs, from January 1 through December 31 of each year. Under this application, TRC is also seeking a right to divert to storage 88 AF from January 1 through December 31 of each year from El Paso Creek. The total combined amount taken by direct diversion and storage during any one year will be 2576 AF. The water will be used for irrigation on TRC's lands.

- Under Application 31047, TRC seeks a right to directly divert from Tejon Creek at a maximum rate of 11.4 cfs from January 1 through December 31 annually. The total amount taken by direct diversion during any one year will be 3067 AF. The water will be used for irrigation on TRC's lands.

Protests: A number of protests were filed against the subject applications. Following negotiation with TRC, all the protests have been conditionally withdrawn except for a protest filed by the California Department of Fish and Game (CDF&G or Protestant).

WRMWSO filed a protest against Applications 30325 and 30326 on March 21, 1995. WRMWSO withdrew its protest on June 15, 1995, after reaching an agreement with TRC. On April 19, 2001, the protests of Arvin-Edison Water Storage District, Kern Delta Water Storage District, and Kern County Water Agency (Water Districts) were accepted. The protests were based on allegations that the proposed projects may reduce the safe yields, or increase overdraft, of the Kern County and White Wolf ground water basins. The protests were resolved by letter dated January 23, 2006, based on the parties' agreement to inclusion of the following two permit terms in any water right issued to TRC:

- (1) The maximum total diversions under all permits issued under Applications 30325-30329 and 31043-31048 will not exceed 15,000 acre-feet in any calendar year and;
- (2) Permittee is signatory to the February 2004 Memorandum of Understanding (MOU) among permittee, Wheeler Ridge-Maricopa Water Storage District, Kern Delta Water District, Arvin Edison Water Storage District and Kern County Water Agency, which places additional conditions on the operation of the project described in the permits. The State Water Board acknowledges the existence of the MOU, but makes no findings as to the content of the MOU and, therefore, will not enforce the conditions of the MOU as a condition of this permit. Enforceable terms defining the scope of the permit are listed independently in the permit and may not be included in the MOU.

The CDF&G filed a protest against Applications 30325, 30326, 31043 and 31047 on March 19, 2001, based on allegations of the project's potential adverse effects on wildlife and plant populations. The CDF&G protest is the only protest against TRC's water right applications that remains unresolved.

Compliance with the California Environmental Quality Act: WRMWSO is the lead agency pursuant to the California Environmental Quality Act (CEQA), Public Resources Code 21000, et seq. The State Water Board is a responsible agency pursuant to CEQA. On July 14, 2004, WRMWSO certified an environmental impact report (EIR) on the the *Laval Farms Water Management and Exchange, Including Water Right Application, and Wheeler Ridge-Maricopa*

Water Storage District 850 Canal/Reservoir No. 1 Pump-Back Project. The EIR includes consideration of potential environmental impacts of the diversion and use of water proposed in Applications 30325, 30326, 31043 and 31047.

ISSUES

The State Water Board's decision whether to approve or not approve TRC's water right Applications 30325, 30326, 31043 and 31047 will be based upon the record developed at the hearing. The Applicant and Protestant should submit exhibits and testimony responsive to the following issues that will be considered during the hearing:

Issues concerning the California Department of Fish and Game's unresolved protest:

1. Will approval of TRC's applications result in any significant adverse public trust and/or environmental impacts to the Tehachapi Slender Salamander (*Batrachoseps stebbinsi*), the Yellow-Blotched Salamander (*Ensatina eschscholtzii croceater*), or riparian vegetation, specifically the Sycamore Riparian Woodland (*Platanus racemosa*)? If so, what are the impacts? Can these impacts be avoided or mitigated to a level of non-significance? If so, how? What conditions, if any, should the State Water Board adopt to avoid or mitigate any potential adverse impacts on the salamanders, or the riparian vegetation, specifically the Sycamore Riparian Woodland, that would otherwise occur as a result of approval of TRC's applications?

Other issues related to issuance of the requested water right permits:

2. Is there water available for appropriation by TRC as requested in the pending applications? (Water Code section 1375.) If so, when and under what circumstances is water available? Are other sources of surface water or groundwater available to the applicant during periods when water sought under the applications may not be available for appropriation? If so, what are they and how much water is available to serve the proposed project?
3. Are the proposed appropriations beneficial and in the public interest? (Water Code sections 1255 and 1375)
4. Will the proposed appropriations cause injury to the prior rights of other legal users of the water?
5. If permits are issued on the pending applications, what conditions should be included to ensure that any diversions under the permits are in accordance with applicable law and the public interest? (Water Code section 1253.)

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 State Water Board by **noon on Monday, September 18, 2006**.

To facilitate exchange of testimony, exhibits and witness qualifications, on or about **Wednesday, September 20, 2006**, the State Water Board will mail out a list of those parties who have indicated 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

State Water Board and each of the parties who have indicated their intent to appear no later than **noon on Friday, October 20, 2006.**

PARKING, ACCESSIBILITY, AND SECURITY

The [enclosed maps](#) show the location of the Joe Serna Jr./Cal EPA Building and public parking sites in Sacramento. The Joe Serna Jr./Cal EPA Building Sierra Room is accessible to persons with disabilities.

Due to enhanced security precautions at the Cal/EPA Headquarters Building located at 1001 I Street, Sacramento, all visitors are required to sign in prior to attending any meeting. Sign-in and badge issuance occur in the Visitor and Environmental Services Center. This Center is located just inside and to the left of the building's public entrance. Depending on their destination and the building security level, visitors may be asked to show valid picture identification. Valid picture identification can take the form of a current drivers license, military identification card, or state or federal identification cards. Depending on the size and number of meetings scheduled on any given day, the security check-in could take from three to fifteen minutes. Please allow adequate time to sign in before being directed to your meeting.

IF YOU HAVE ANY QUESTIONS

State Water Board Vice Chair Gerald Secundy will be the hearing officer presiding over this proceeding. State Water Board hearing team members will be Dan Frink, Senior Staff Counsel; Ernie Mona, Water Resources Engineer; and Jane Farwell, Staff Environmental Specialist. *Ex parte* communications with members of the Board or State Water Board 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 Dan Frink at (916) 341-5189 (dfrink@waterboards.ca.gov) or Jane Farwell at (916) 341-5349 (jfarwell@waterboards.ca.gov).



Song Her
Clerk to the Board

Enclosure

Date: September 8, 2006

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 (State Water Board) is available upon request or may be viewed at the State Water Board's web site: 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 applicants/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 State Water Board no later than **noon on Monday, September 18, 2006**. Failure to submit a Notice of Intent to Appear and exhibits in a timely manner may be interpreted by the State Water Board as intent not to appear.

The Notice of Intent to Appear must state 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 State Water Board and the other participants as soon as possible.

In order to expedite the exchange of information and lower the cost of participating in the hearing, the State Water Board encourages participants to submit written policy statements, written opening statements, written testimony, exhibits, and Exhibit Identification Indexes to the State Water Board in electronic form. In addition, participants may exchange the foregoing documents in electronic form. Hearing participants are not required to 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 State Water Board 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 **5:00 p.m. on Wednesday, September 27, 2006**, 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 State Water Board 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.² Written testimony shall be designated as an exhibit, and must be submitted with the other exhibits. Oral testimony that goes beyond the scope of the written testimony may be excluded. A participant who proposes to offer expert testimony must submit an exhibit containing a statement of the expert witness's qualifications.

Each participant shall submit to the State Water Board either: (1) six 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 copy of exhibits. Participants must serve paper copies of exhibits on those participants who do not agree to electronic service.

With its exhibits, each participant must submit to the State Water Board and serve on the other participants a completed Exhibit Identification Index. If possible, each participant should submit to the State Water Board and serve on the other participants an electronic copy, as well as a paper copy of the Exhibit Identification Index. Please see Section 5 for details regarding electronic submissions.

² 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.

A statement of service with manner of service indicated shall be filed with each participant's exhibits. The exhibits and indexes for this hearing, and a statement of service, must be **received** by the State Water Board by **noon on Friday, October 20, 2006**, 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 State Water Board 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 State Water Board before the notice of the hearing is issued. (Cal. Code Regs., tit. 23, § 648.3.) A participant offering an exhibit by reference shall advise the other participants and the State Water Board of the titles of the documents, the particular portions, including page and paragraph numbers, on which the participant relies, the nature of the contents, the purpose for which the exhibit will be used when offered in evidence, and the specific file folder or other exact location in the State Water Board's files where the document may be found.
 - c. A participant seeking to enter in evidence as an exhibit a voluminous document or database may so advise the other participants prior to the filing date for exhibits, and may ask them to respond if they wish to have a copy of the exhibit. If a participant waives the opportunity to obtain a copy of the exhibit, the participant sponsoring the exhibit will not be required to provide a copy to the waiving participant.
 - 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 State Water Board in electronic form: written opening statements, written policy statements, written testimony, exhibits, and Exhibit Identification Indexes. In addition, the foregoing documents may be served electronically on those participants who have agreed to accept electronic service. Paper copies of all other documents must be submitted to the State Water Board and served on the other parties, unless the hearing 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 current version supported by Microsoft Excel or Word. Electronic submittals to the State Water Board of documents less than 5 megabytes in size may be sent via electronic mail to: jfarwell@waterboards.ca.gov with subject of "**Hearing on Applications 30325, 30326, 31043 and 31047.**" Electronic submittals to the State Water Board, or participants, of documents greater than 5 megabytes in size should be sent by U.S. mail in PDF format on compact disk (CD™) media.

Participants who agree to electronic service may request that specific documents be provided to them in paper copy. Requests should be made to the participant who submitted the document, not to the State Water Board. Participants who receive such a request shall provide a paper copy of the requested document within five days of the date the request is received. The State Water Board will post a list of all exhibits

submitted for the hearing on its website at
<http://www.waterrights.ca.gov/Hearings/tejon.html>.

6. **ORDER OF PROCEEDING:** The State Water Board member serving as hearing officer will follow the Order of Proceedings specified in California Code of Regulations, title 23, section 648.5. Participants should take note of the following additional information regarding the major hearing events. 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 State Water Board 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 State Water Board requests that policy statements be provided in writing before they are presented. Please see Section 5, above, for details regarding electronic submittal of policy statements. Oral summaries of the policy statements will be limited to five minutes or such other time as established by the hearing 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.³ Each participant will be allowed up to two hours total to present all of its direct testimony.⁴

- 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. State Water Board members and the State Water Board's counsel may ask questions at any time, and the State Water Board members and staff may cross examine any witness.
- c. **Rebuttal:** After all participants have presented their cases in chief and their witnesses have been cross-examined, the hearing officer will allow participants to present rebuttal evidence. Rebuttal evidence is new evidence used to rebut evidence presented in another participant's case in chief. Rebuttal testimony and exhibits need not be submitted prior to the hearing. Rebuttal evidence is limited to evidence that is responsive to evidence presented in a case in chief, and it does not include evidence that should have been presented during the presenter's case in chief. It also does not include repetitive evidence. Cross-examination of rebuttal evidence will be limited to the scope of the rebuttal evidence.
- d. **Closing Statements and Legal Arguments:** At the close of the hearing or at other times if appropriate, the hearing officer may allow oral arguments or set a schedule for filing briefs or closing statements. If the hearing officer 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, unless otherwise directed by the hearing officer. If the hearing officer authorizes the participants to file briefs, six copies of each brief shall be submitted to the State Water Board, and one copy shall be served on each of the other participants on the service list. A participant shall not attach a document of an evidentiary nature to a brief unless the document is at the time in the evidentiary hearing record or is the subject of an offer of the document in evidence. Every participant filing a brief shall file a statement of service with the brief, indicating the manner of service.
- 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.

³ 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.

⁴ 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.

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 State Water Board members or State Water Board 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 State Water Board staff, not State Water Board 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.
10. **SUBMITTALS TO THE STATE WATER BOARD:** Notices of Intent to Appear, written testimony and other exhibits submitted to the State Water Board should be addressed as follows:

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

Attn: Jane Farwell

Phone: (916) 341-5349 Fax: (916) 341-5400
Email: jfarwell@waterboards.ca.gov

With Subject of: "Hearing on Applications 30325, 30326, 31043 and 31047"

STAFF EXHIBITS TO BE OFFERED INTO EVIDENCE

The following will be offered, by reference, as staff exhibits at the **November 2 and 3, 2006**, water right hearing:

1. All water right files related to Applications 30325, 30326, 31043 and 31047.
2. Topographic maps published by the United States Geological Survey covering the area of consideration.

**Applications 30325, 30326, 31043 and 31047: Water Right Hearing
Exhibit Identification Index**

Participant _____

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