



Linda S. Adams
Secretary for
Environmental Protection

State Water Resources Control Board



Arnold Schwarzenegger
Governor

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
Public Hearing to Consider

**Water Right Applications 31487 and 31488 filed by the
United States Bureau of Reclamation
and**

**Petitions to Change
License 3723 (Application 5169) of Washoe County Water Conservation District,
License 4196 (Application 9247) of Truckee Meadows Water Authority, and
Permit 11605 (Application 15673) and License 10180 (Application 18006)
of the United States Bureau of Reclamation**

Truckee River Watershed

The **Pre-Hearing Conference**
will commence on
Thursday, May 27, 2010
at **1:00 p.m.**

in the
Coastal Hearing Room
Joe Serna, Jr./Cal-EPA Building
1001 I Street, Second Floor
Sacramento, CA

The **Hearing** will commence on
Wednesday, July 21, 2010
at **9:00 a.m.**
and continue, if necessary, on
July 22 and 23, 2010
and again on
July 28 and 29, 2010

in the
Coastal Hearing Room
Joe Serna, Jr./Cal-EPA Building
1001 I Street, Second Floor
Sacramento, CA

California Environmental Protection Agency

PURPOSE OF HEARING

The purpose of this evidentiary hearing is to receive relevant evidence to be considered by the State Water Resources Control Board (State Water Board) in determining whether to approve, subject to terms and conditions, the four change petitions and two applications identified above.¹ The change petitions and applications are described in more detail below.

BACKGROUND

According to the United States Bureau of Reclamation (Reclamation), the Washoe County Water Conservation District (Conservation District), and the Truckee Meadows Water Authority (TMWA), the applications and petitions for change are intended to accommodate implementation of the Truckee River Operating Agreement (TROA). TROA was negotiated pursuant to section 205 of title II of the Truckee-Carson-Pyramid Lake Water Rights Settlement Act of 1990, Public Law 101-618. The Settlement Act provides, in part, for Truckee River water supply management and an interstate allocation between California and Nevada of the waters of the Truckee River, Carson River, and Lake Tahoe.

The applicant and petitioners state that TROA has been negotiated to make operations at existing Truckee River reservoirs more effective and efficient, and to expand the reservoirs' use to provide multiple benefits, including benefits to instream flows, water quality, recreational uses, and municipal and industrial drought water supply, while satisfying the exercise of existing water rights. Various conditions must be met before TROA (and the interstate allocation) take effect, including the State Water Board's approval of the change petitions and modifications to the Orr Ditch Decree. The applicant and petitioners request that any State Water Board approval of the applications and change petitions not take effect until TROA is executed and becomes effective.

TROA was signed on September 6, 2008. The signatory parties include the States of California and Nevada, the Pyramid Lake Paiute Tribe, the United States Department of Justice, the United States Department of Interior, the Conservation District, and TMWA.

Change Petitions

In December 2003 the Conservation District, Reclamation, and TMWA filed petitions to change the permit and licenses for four Truckee River reservoirs:

- **Boca Reservoir**. License 3723 is held by the Conservation District. Water is diverted to Boca Reservoir in Nevada County, California, from the Little Truckee River, which is tributary to the Truckee River.
- **Stampede Reservoir**. Permit 11605 is held by Reclamation. Water is diverted to Stampede Reservoir in Sierra County, California, from the Little Truckee River, which is tributary to the Truckee River.
- **Independence Lake**. License 4196 is held by TMWA. Water is diverted to Independence Lake in Nevada and Sierra Counties, California, from Independence Creek, which is tributary to the Little Truckee River thence the Truckee River.
- **Prosser Creek Reservoir**. License 10180 is held by Reclamation. Water is diverted to Prosser Creek Reservoir in Nevada County, California, from Prosser Creek, which is tributary to the Truckee River.

¹ A quorum of the State Water Board may be present.

The petitions for change request: (1) redistribution of storage within the four reservoirs; (2) the addition of points of diversion and rediversion; (3) enlargement of the place of use to provide for a common place of use under the licenses and permit; and (4) the addition of purposes of use so that the licenses and permit have the same purposes of use, except for Independence Dam and Reservoir (which is not used for flood control purposes). In addition, Reclamation requests that a permit term be eliminated in License 10180 (Prosser Creek Reservoir) and replaced by operating criteria provided in TROA. The existing water rights and proposed changes are described in detail in the State Water Board's notice of the change petitions and applications, dated January 30, 2007, which is available on the State Water Board's website at: http://www.waterboards.ca.gov/waterrights/water_issues/programs/applications/petitions/2007/tr oa_project_notice_final012507.pdf.

Because implementation of the changes proposed in these petitions is predicated on the approval and implementation of TROA, petitioners request that any order by the State Water Board approving the petitions include the following condition:

These changes will not take effect unless the Truckee River Operating Agreement is in effect. All diversions, storage, use of water and operations under these licenses and permit shall be in accordance with the terms contained in this license/permit and the provisions of the Truckee River Operating Agreement.

Water Right Applications

Together with the change petitions, Reclamation filed two water right applications—one for the Little Truckee River (Application 31487) and one for Prosser Creek (Application 31488). Similar to the change petitions, Reclamation requests that any approval of the water right applications include the condition that the approval will not take effect until TROA takes effect.

Application 31487 would supplement existing Permit 11605 for Stampede Reservoir and requests an increase of 100,500 acre-feet over the amount authorized to be diverted to storage under the current permit for the reservoir. The maximum annual quantity to be appropriated by direct diversion or by storage under Application 31487 is 226,500 acre-feet per annum (afa) in combination with Permit 11605.

Application 31488 would supplement current License 10180 for Prosser Creek Reservoir. The application requests an increase in the existing maximum withdrawal of 20,162 acre-feet in any one year, and would extend the diversion to storage season from April 10 through August 10, which is currently authorized under License 10180, to October 1 through August 10. The maximum annual quantity of storage under this application and License 10810 would be limited to 30,000 acre-feet.

The water right applications are described in more detail in the State Water Board's January 30, 2007 notice of the change petitions and applications, which is available on the State Water Board's website at the web page identified above.

Protests

The State Water Board provided notice of the change petitions and applications on January 30, 2007. On April 2, 2007, protests to each of the four change petitions and two applications were filed jointly by the Truckee-Carson Irrigation District (TCID); Churchill County, Nevada; Newlands Project individual water right owners (Ernest C. Schank, Richard Harriman, Ray Peterson, Don Travis, Jerry Blodgett, Lester deBraga, and Larry Miller); and the City of Fallon, Nevada. TCID claims a contractual responsibility to operate and maintain the Newlands Reclamation Project and to deliver water to the water right owners, including the other co-protestants. The protests are based on injury to prior rights, injury to the public interest, injury to the public trust, and environmental grounds.

The California Environmental Quality Act (CEQA)

Pursuant to the National Environmental Policy Act (NEPA) and CEQA, the U. S. Department of Interior and the California Department of Water Resources (DWR) prepared a joint Environmental Impact Statement/Environmental Impact Report (EIS/EIR) for TROA. In September 2008 the Secretary of the Interior signed the Record of Decision under NEPA, and the California Resources Secretary signed the Notice of Determination under CEQA. The Final EIS/EIR addresses the change petitions and applications considered in this proceeding. The State Water Board is a responsible agency under CEQA.

KEY ISSUES

The State Water Board's decision in this proceeding must be based upon evidence in the record developed at the hearing. Parties to the hearing should submit exhibits and testimony responsive to the following issues that will be considered during the hearing:

1. Petitions to Change Permit 11605 and Licenses 3723, 4196, and 10180
 - a. Should the State Water Board approve the petitions to change Permit 11605, and Licenses 3723, 4196, and 10180?
 - i. Will the proposed changes injure any legal user of water? If the State Water Board approves the changes, what conditions, if any, should the board adopt to avoid any injury?
 - ii. Will the proposed changes in effect initiate a new water right?
 - iii. Will the proposed changes result in any significant adverse impacts to water quality, the environment, or public trust resources? If so, what conditions, if any, should the State Water Board adopt to avoid or mitigate any such potential adverse impacts?
 - iv. If the State Water Board approves the changes, what conditions, if any, should the board adopt to meet the requirements of the Truckee River Operating Agreement?
2. Water Right Applications 31487 and 31488
 - a. Should the State Water Board approve either water right Application 31487 or Application 31488, or both?
 - i. Is water available for appropriation under each of the applications? If so, when is water available and under what circumstances, taking into consideration prior rights? What conditions, if any, should the State Water Board adopt to protect prior rights?

- ii. Will the water be put to beneficial use and are each of the proposed appropriations in the public interest? If the State Water Board approves the applications, what conditions, if any, should the board adopt to ensure that the diversions are in accordance with applicable law and best serve the public interest?
- iii. Will approval of the applications result in any significant adverse impacts to water quality, the environment, or public trust resources? What conditions, if any, should the State Water Board adopt to avoid or mitigate any such potential adverse impacts?
- iv. If the State Water Board approves the applications, what conditions, if any, should the board adopt to meet the requirements of the Truckee River Operating Agreement?

HEARING OFFICERS AND HEARING TEAM

State Water Board Chairman Charles Hoppin and Member Tam Doduc will preside as co-hearing officers over this proceeding. Other members of the State Water Board may be present during the proceeding. State Water Board staff hearing team members will include Erin Mahaney, Senior Staff Counsel; Paul Murphey, Staff Engineering Geologist; and Jean McCue, Staff Water Resource Control Engineer. The hearing team will assist the hearing officers and other members of the State Water Board throughout this proceeding.

HEARING PARTICIPATION

IF YOU WANT TO TAKE PART IN THE EVIDENTIARY HEARING, you should carefully read the attachment entitled “Information Concerning Appearance at Water Right Hearings.” As stated in that attachment, everyone wishing to present evidence at the hearing must submit a **Notice of Intent to Appear**, which must be **received** by the State Water Board no later than the deadline listed below. Interested persons who will not be participating as parties, but instead desire only to present non-evidentiary policy statements, as discussed in the attachment, should also file a Notice of Intent to Appear.

Within one week after the deadline for Notices of Intent to Appear, the State Water Board will mail out a list of persons who have indicated a desire to participate in the hearing and a copy of all Notices of Intent to Appear that were timely received by the State Water Board. The list is provided in order to facilitate exchange of written testimony, exhibits and witness qualifications in advance of the hearing. Except as otherwise determined by the hearing officers, a participant must timely file a Notice of Intent to Appear to be recognized as a party and be allowed to present evidence. Copies of witnesses’ proposed **testimony, exhibits, lists of exhibits, qualifications, and statement of service** must be **received** by the State Water Board and served on each of the parties who have indicated their intent to appear, no later than the deadline listed below.

12 Noon, Monday, May 17, 2010

Deadline for receipt of Notice of Intent to Appear.

12 Noon, Tuesday, June 29, 2010

Deadline for receipt and service of witnesses’ proposed testimony, exhibits, lists of exhibits, qualifications, and statement of service.

PRE-HEARING CONFERENCE

The hearing officers will conduct a pre-hearing status conference to discuss the scope of the hearing, the status of protests, and any other appropriate procedural issues on **Thursday, May 27, 2010, at 1:00 p.m.** The goal of the pre-hearing conference is to ensure that the hearing proceeds in an orderly and expeditious manner. The pre-hearing conference will not be used to hear arguments on or determine the merits of any hearing issues, other than procedural matters, unless the parties agree to resolve a hearing issue by stipulation. Following the pre-hearing conference, the State Water Board may at its discretion modify the hearing procedures or issues set forth in this notice in whole or in part. **All parties to the hearing must attend the pre-hearing conference.** Failure to attend the pre-hearing conference may result in exclusion from participation in the hearing.

SUBMITTALS TO THE 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
Attention: Paul Murphey
P.O. Box 2000
Sacramento, CA 95812-2000

Phone: (916) 341-5435
Fax: (916) 341-5400

Email: wrhearing@waterboards.ca.gov
With Subject of “**Truckee River Hearing**”

Hearing-related documents, including testimony and exhibits, will be posted on the State Water Board's website at:
http://www.waterboards.ca.gov/waterrights/water_issues/programs/hearings/truckee_river/index.shtml .

IF YOU HAVE ANY QUESTIONS

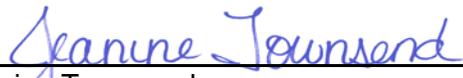
During the pendency of this proceeding, and commencing no later than the issuance of this notice, there shall be no *ex parte* communications between State Water Board members or State Water Board hearing team staff and any of the other participants regarding substantive or controversial procedural matters within the scope of the proceeding. (Gov. Code, §§ 11430.10-11430.80.) Questions regarding non-controversial procedural matters (Gov. Code, § 11430.20, subd. (b)) should be directed to Senior Staff Counsel Erin Mahaney at (916) 341-5187, or by email to emahaney@waterboards.ca.gov, or to Staff Engineering Geologist Paul Murphey at (916) 341-5435, or by email to pmurphey@waterboards.ca.gov.

PARKING, ACCESSIBILITY AND SECURITY

There is parking across the street from the Joe Serna Jr. Cal/EPA Headquarters Building in Sacramento. The Cal/EPA Building is accessible to people with disabilities. Individuals who require special accommodations at the Cal/EPA Building are requested to contact Catherine Foreman, Office of Employee Assistance, at (916) 341-5881 at least seven days prior to the hearing or pre-hearing conference.

Due to enhanced security precautions at the Cal/EPA Headquarters Building, all visitors are required to register with security staff prior to attending any meeting. To sign in and receive a visitor's badge, visitors must go to the Visitor and Environmental Services Center, located just inside and to the left of the building's public entrance. Visitors may be asked to show valid picture identification. Valid picture identification can take the form of a current driver's license, military identification card, or state or federal identification card. Depending on the size and number of meetings scheduled on any given day, the security check-in could take up to fifteen minutes. Please allow adequate time to sign in before being directed to the hearing.

April 19, 2010
Date



Jeanine Townsend
Clerk to the Board

Attachment

INFORMATION CONCERNING APPEARANCE AT WATER RIGHT HEARINGS

The following procedural requirements will apply and will be strictly enforced:

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 648-648.8, 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 Board is available upon request or may be viewed at the State Water Board's web site: http://www.waterboards.ca.gov/laws_regulations.

Unless otherwise determined by the hearing officers, each party may make an opening statement, 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. At the discretion of the hearing officers, parties may also be afforded the opportunity to present closing statements or submit briefs. The State Water Board encourages (but does not require) parties with common interests to work together to make the hearing process more efficient. The hearing officers reserve the right to issue further rulings clarifying or limiting the rights of any party where authorized under applicable statutes and regulations.

Any requests for exceptions to procedural requirements shall be filed in writing with the State Water Board and served on the parties. To provide time for parties to respond, the hearing officers will rule on procedural requests filed in writing no sooner than 15 days after receiving the request, unless an earlier ruling is necessary to avoid disrupting the hearing.

2. **PARTIES:** The parties are **U.S. Bureau of Reclamation; Washoe County Water Conservation District; Truckee Meadows Water Authority; Truckee-Carson Water Irrigation District; Churchill County, Nevada; Newlands Project individual water right owners (Ernest C. Schank, Richard Harriman, Ray Peterson, Don Travis, Jerry Blodgett, Lester deBraga, and Larry Miller); and the City of Fallon, Nevada**, and other persons or entities who are designated as parties in accordance with the procedures for this hearing. Except as may be decided by specific rulings of the hearing officers, any person or entity who timely files a Notice of Intent to Appear indicating the desire to participate beyond presenting a policy statement shall be designated as a party. Persons or entities who do not timely file a Notice of Intent to Appear may be designated as parties at the discretion of the hearing officers, for good cause shown, and subject to appropriate conditions as determined by the hearing officers. Except as specifically provided in this notice or by ruling of the hearing officers, only parties will be allowed to present evidence.

A person or entity that appears and presents only a policy statement is not a party and will not be allowed to make objections, offer evidence, conduct cross-examination, make legal argument or otherwise participate in the evidentiary hearing. The rules for policy statements are discussed below.

3. **NOTICE OF INTENT TO APPEAR:** Persons and entities who seek to participate as parties in this hearing must file either an electronic copy or a paper copy of a Notice of Intent to Appear, which must be **received** by the State Water Board no later than **the deadline prescribed in the Hearing Notice**. 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. Any faxed or emailed Notices of Intent to Appear must be followed by a mailed or delivered hard copy with an original signature.

Interested persons who will not be participating as parties, but instead presenting only non-evidentiary policy statements, as discussed in section 6, below, should also file a Notice of Intent to Appear.

The Notice of Intent to Appear must state the name and address of the participant. Except for interested persons who will not be participating as parties, the Notice of Intent to Appear must also include: (1) the name of each witness who will testify on the party's behalf; (2) a brief description of each witness's proposed testimony; and (3) an estimate of the time (not to exceed 20 minutes) that the witness will need to present a brief oral summary of his or her testimony. The witness's testimony must be submitted in writing as described in section 4 below. Parties who do not intend to present a case-in-chief but wish to cross-examine witnesses or present rebuttal should so indicate on the Notice of Intent to Appear.¹ Parties 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 parties 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 hearing documents to the State Water Board in electronic form. In addition, participants may exchange the documents in electronic form. Hearing participants are not required to submit these documents in electronic form or accept electronic service. 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.

The State Water Board will mail a service list of parties to exchange information to each person who has submitted a Notice of Intent to Appear. The service list will indicate which parties agreed to accept electronic service. If there is any change in the hearing schedule, only those parties on the service list, and interested persons that have filed a Notice of Intent to Appear expressing their intent to present a policy statement only 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 party 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 party who proposes to offer

¹ A party is not required to present evidence as part of a case-in-chief. Parties not presenting evidence as part of a case-in-chief will be allowed to participate through opening statements, cross-examination and rebuttal, and may also present closing statements or briefs, if the hearing officers allow these in the hearing.

² The hearing officers 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 officers may allow presentation of the oral direct testimony without requiring written testimony.

expert testimony must submit an exhibit containing a statement of the expert witness' qualifications.

Each party shall submit to the State Water Board either: seven paper copies of each of its exhibits; or five paper copies and one electronic copy of each of its exhibits. **All electronic and paper copies must be received by the State Water Board no later than the deadline stated in the Hearing Notice.** Each party shall also serve a copy of each exhibit on every party on the service list, with electronic service permitted for those parties who agree to electronic service. Interested persons who intend to make only policy statements are not required to exchange information and will not receive copies of written testimony or exhibits from the parties. All testimony, exhibits, and policy statements that are timely received will be posted on the hearings program webpage identified in the hearing notice.

With its exhibits, each party must submit to the State Water Board and serve on the other parties a completed Exhibit Identification Index. If possible, each party should submit to the State Water Board and serve on the other parties an electronic copy, as well as a paper copy of the Exhibit Identification Index. Please see Section 5 below for details regarding electronic submissions. 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 State Water Board and served on the other parties no later than the deadline prescribed in the Hearing Notice.**

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 officers have 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 party offering an exhibit by reference shall advise the other parties and the State Water Board 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 State Water Board'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 respond if they wish to have a copy of the exhibit. If a party waives the opportunity to obtain a copy of the exhibit, the party sponsoring the exhibit will not be required to provide a copy to the waiving party. Additionally, with the permission of the hearing officers, such exhibits may be submitted to the State Water Board in electronic form, using a file format readable by Microsoft Office 2003 software.
- d. Exhibits that rely on unpublished technical documents will be excluded unless the unpublished technical documents are admitted as exhibits.

- e. Parties 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, parties may supply, for the hearing record, a reduced copy of a large format original if it is readable.

- 5. **ELECTRONIC SUBMISSIONS:** Participants are encouraged to submit hearing documents to the State Water Board in electronic form. In addition, the documents may be served electronically on those parties 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 officers specifies otherwise.

Any documents submitted or served electronically must be in Adobe Portable Document Format (PDF), except for Exhibit Identification Indexes, which may be in a version supported by Microsoft Excel or Word. Electronic submittals to the State Water Board of documents less than 11 megabytes in total size (incoming mail server attachment limitation) may be sent via electronic mail to: wrhearing@waterboards.ca.gov with a subject of “**Truckee River Hearing.**” Electronic submittals to the State Water Board of documents greater than 11 megabytes in total size should be sent by regular mail in PDF format on compact disk (CD) media. Each electronically submitted exhibit must be saved as a separate PDF file, with the name in lower case lettering.

Electronic service on parties shall be in the same format as submittals to the State Water Board, and should be submitted to the parties to the e-mail addresses provided on the Notices of Intent to Appear. Parties who agree to electronic service may request that specific documents be provided to them in paper copy, or by mail on CD. 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.

- 6. **ORDER OF PROCEEDING:** The State Water Board members serving as co-hearing officers 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 officers, at their discretion, as a result of the pre-hearing conference.

- a. **Policy Statements Within the Evidentiary Hearing:** Pursuant to California Code of Regulations, title 23, section 648.1, subdivision (d), the State Water Board will provide an opportunity for presentation of non-evidentiary policy statements or comments by interested persons who are not designated as parties. Policy statements will be heard at the start of the hearing, before the presentation of cases-in-chief. Policy statements are subject to the following provisions in addition to the regulation:

- i. Policy statements are not subject to the pre-hearing 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 officers.

- b. **Presentation of Cases-In-Chief:** Each party 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 party, oral testimony, introduction of exhibits, and cross-examination of the party's witnesses. The hearing officers may allow redirect examination and recross examination. The hearing officers will decide whether to accept the party's exhibits in evidence upon a motion of the party after the case-in-chief has been completed.
- 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. Please see section 5, above, for details regarding electronic submittal of written opening statements. Any policy-oriented statements by a party 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. Each party will be allowed up to two hours total to present all of its direct testimony.³
- 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 officers 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 officers have 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 officers 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 party or the party's representative will be permitted to examine a witness, but the hearing officers may allow a party 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.

³ The hearing officers may, for good cause, approve a party's request for additional time to present direct testimony during the party's case-in-chief. The hearing officers may allow additional time of the oral direct testimony of the witness if the witness is adverse to the party presenting the testimony and the hearing officers are satisfied that the party could not produce written direct testimony for the witness.

- c. **Rebuttal:** After all parties have presented their cases-in-chief and their witnesses have been cross-examined, the hearing officers will allow parties to present rebuttal evidence. Rebuttal evidence is new evidence used to rebut evidence presented by another party. 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 connection with another party's case-in-chief, and it does not include evidence that should have been presented during the case-in-chief of the party submitting rebuttal evidence. 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 officers may allow oral closing statements or legal arguments or set a schedule for filing legal briefs or written closing statements. If the hearing officers authorize the parties to file briefs, five 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 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.
7. **EX PARTE CONTACTS:** During the pendency of this proceeding, commencing no later than the issuance of the Notice of Hearing, there shall be no *ex parte* communications between either State Water Board members or State Water Board hearing team staff and supervisors, and any of the other participants regarding substantive or controversial procedural issues within the scope of the proceeding. (Gov. Code, §§ 11430.10-11430.80.) Communications regarding non-controversial procedural matters are permissible and should be directed to staff on the hearing team, not State Water Board members. (Gov. Code, § 11430.20, subd. (b).) A document regarding *ex parte* communications entitled "*Ex Parte* Questions and Answers" is available upon request or from our website at: http://www.waterboards.ca.gov/laws_regulations/docs/exparte.pdf.
8. **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.

Truckee River Hearing

scheduled to commence
Wednesday, July 21, 2010

STAFF EXHIBITS TO BE OFFERED INTO EVIDENCE

Staff Exhibit Identification Index

The following items will be offered into evidence, by reference, as staff exhibits at the hearing.

Exhibit Identification Number	Exhibit Description	Status of Evidence		
		Introduced	Accepted	By Official Notice
SWRCB-1	Water right files for application 5169			
SWRCB-2	Water right files for application 9247			
SWRCB-3	Water right files for application 15673			
SWRCB-4	Water right files for application 18006			
SWRCB-5	Water right files for application 31487			
SWRCB-6	Water right files for application 31488			
SWRCB-7	Truckee River Operating Agreement Final Environmental Impact Statement/Environmental Report and Appendices. January 2008			
SWRCB-8	U.S. Geological Survey Water-Resources Investigation Report 98-4064, Plate 1. Map showing hydrogeologic features, data-collection sites, and river reaches of the upper, middle, and lower subunits of the Truckee River, California and Nevada. R. Lynn Taylor. 1998.			
SWRCB-9	United States Geological Survey, Water Data Reports for the period of published record and covering the Truckee River watershed http://pubs.usgs.gov/wdr/			
SWRCB-10	Water Quality Control Plan for the Lahontan Region, as originally approved by the State Water Resources Control Board, and any amendments thereto ¹			

¹ The Water Quality Control Plan for the Lahontan Region can be found at http://www.waterboards.ca.gov/lahontan/water_issues/programs/basin_plan/references.shtml

Truckee River Hearing

scheduled to commence
Wednesday, July 21, 2010

NOTICE OF INTENT TO APPEAR

_____ plans to participate in the water right hearing regarding
(name of party or participant)

Check all that apply:

- I/we intend to present a policy statement only.
- I/we intend to participate by cross-examination or rebuttal only.
- I/we agree to accept electronic service of hearing-related materials.
- I/we plan to call the following witnesses to testify at the hearing.

NAME	SUBJECT OF PROPOSED TESTIMONY	ESTIMATED LENGTH OF DIRECT TESTIMONY	EXPERT WITNESS (YES/NO)

(If more space is required, please add additional pages or use reverse side.)

Name, Address, Phone Number and Fax Number of Attorney or Other Representative:

Signature: _____ Dated: _____

Name (Print): _____

Mailing Address: _____

Phone Number: () _____ Fax Number: () _____

E-mail: _____

