



Alan C. Lloyd, Ph.D.
Agency Secretary

State Water Resources Control Board

Division of Water Rights

1001 I Street, 14th Floor ♦ Sacramento, California 95814 ♦ 916.341.5435
Mailing Address: P.O. Box 2000 ♦ Sacramento, California 95812-2000
FAX: 916.341.5400 ♦ www.waterrights.ca.gov



Arnold Schwarzenegger
Governor

NOTICE OF PUBLIC WATER RIGHT HEARING

The State Water Resources Control Board will hold a hearing on Proposed Revocation of Permit 20247 (Application 28669) of Michael L. and Knox P. Miller

Potter Valley, Mendocino County

The hearing will commence on Monday August 29, 2005 at 10:00 a.m.

at

**Joe Serna, Jr./Cal-EPA Building
1001 I Street, Second Floor Sierra Hearing Room
Sacramento, CA**

SUBJECT OF THE HEARING

The purpose of this hearing is to receive evidence so the State Water Resources Control Board (State Water Board) can determine whether Permit 20247 (Application 28669), assigned to Michael L. and Knox P. Miller (permittees), should be revoked for failure to construct the project and to apply the authorized water to beneficial use as described in the permit.

BACKGROUND

The State Water Board's Division of Water Rights (Division) issued Permit 20247 on July 18, 1988. The permit authorizes the permittees to divert water at 0.3 cubic feet per second from January 1 to December 31 of each year, not to exceed 216 acre-feet of water per year, for stockwatering and irrigation. The permit requires that construction work be completed by December 31, 1991, and that the water be applied to the authorized uses by December 31, 1992.

On July 12, 2000, Division staff conducted a pre-licensing inspection and found no established point of diversion (POD) and the place of use (POU) exceeded the acreage allowed in the permit. During the inspection it was revealed that the vineyard was irrigated with purchased water.

On June 18, 2001, the Division informed the permittee in writing that in order to maintain the water right they must file a petition for extension of time and do one of the following:

Either:

1. File a new application to cover the acreage that exceeds the POU allowed in the permit,
or

California Environmental Protection Agency

2. File a change petition to expand the POU if they are able to document the ability to irrigate the entire acreage with the same amount of water allowed under the permit.

On August 24, 2001, the permittees filed a time extension petition and a change petition. The petitions did not include the required filing fees and were, therefore, not accepted.

On March 25, 2004, the Division issued a Notice of Proposed Revocation for Permit 20247 to Jack and Anne Air. Subsequently, the Division was advised by letter dated April 6, 2004, that Michael and Knox Miller had purchased the property.

On September 23, 2004, Michael Miller requested a hearing on the proposed revocation for Permit 20247.

KEY ISSUE

Should Permit 20247 be revoked for failure to construct the project and to apply the water to beneficial use as described in the permit?

ABOUT THIS HEARING

In this hearing, the Division of Water Rights will be represented by a prosecution team who will be a party in the hearing. The prosecution team will consist of Scott McFarland, Staff Engineer, Kathy Mrowka, Senior Engineer, and Samantha Olson, Staff Counsel. The prosecution team is separated by an ethical wall from the hearing team, and is prohibited from having *ex parte* communications with members of the hearing team regarding substantive issues and controversial procedural issues within the scope of this hearing.

The hearing team will consist of two hearing officers and the hearing staff (see below). The hearing staff will assist the hearing officers and the other members of the State Water Board in the hearing.

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 no later than **noon on Tuesday, July 12, 2005**.

To facilitate exchange of testimony, exhibits and witness qualifications, on or about **Thursday, July 14, 2005**, 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 **received** by the State Water Board and served on each of the parties who have indicated their intent to appear, no later than **noon on Thursday, July 28, 2005**.

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, all visitors are required to register with security prior to attending any meeting. Visitors must go to the Visitor and Environmental Services Center, located just inside and to the left of the building's public entrance, to sign in and receive a visitor's badge. Depending on their destination and the building's 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 Members Richard Katz and Gerald Secundy will preside as hearing officers over this proceeding. Other Board members may be present during the hearing. State Water Board hearing team members will be Barbara Katz, Senior Staff Counsel and Paul Murphey, Engineering Geologist. During the pendency of this proceeding, commencing no later than the issuance of this notice, 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.) Questions regarding procedural matters should be directed to Ms. Katz, who may be reached at (916) 341-5192 or Paul Murphey at (916) 341-5435.


Debbie Irvin
Clerk to the Board

Enclosure

Interested Party List

Michael L. and Knox P. Miller
14100 Powerhouse Road
Potter Valley, CA 95459

Samantha Olson
State Water Resources Control Board
Office of Chief Counsel
P.O. Box 100
Sacramento, CA 95812

**Mandatory Hearings Mailing List
Miller Revocation Hearing A028669**

California Farm Bureau Federation
c/o William Du Bois
Natural Resources Consultant
11th & L Building, Room 626
Sacramento, CA 95814

Nino J. Mascolo
Southern California
Edison Company
2244 Walnut Grove Avenue
Rosemead, CA 91770

U.S. Fish & Wildlife Service
Ecological Division
2800 Cottage Way, Room E1803
Sacramento, CA 95825

Stetson Engineering
c/o Ali Shahrwody
2171 E. Francisco Blvd., Suite K
San Rafael, CA 94901

U.S. Bureau of Reclamation
c/o John Renning MP-440
2800 Cottage Way
Sacramento, CA 95825

Bartkiewicz, Kronick
& Shanahan
c/o Alan B. Lilly
1011 Twenty-Second Street
Sacramento, CA 95816-4907

Calif. Fisheries Restoration Foundation
c/o Martin Seldon
1146 Pulora Court
Sunnyvale, CA 94087-2331

**Mandatory Hearings Mailing List
Miller Revocation Hearing A028669 (cont.)**

City Attorney's Office – PUC Team
City and County of San Francisco
1390 Market Street, Suite 418
San Francisco, CA 94102

U.S. Fish & Wildlife Service
Ventura Fish & Wildlife Office
2493 Portola Road, Suite B
Ventura, CA 93003

Ms. Nancee Murray, Senior Staff Counsel
California Department of Fish & Game
Office of General Counsel
1416 9th Street, 12th Floor
Sacramento, CA 95814

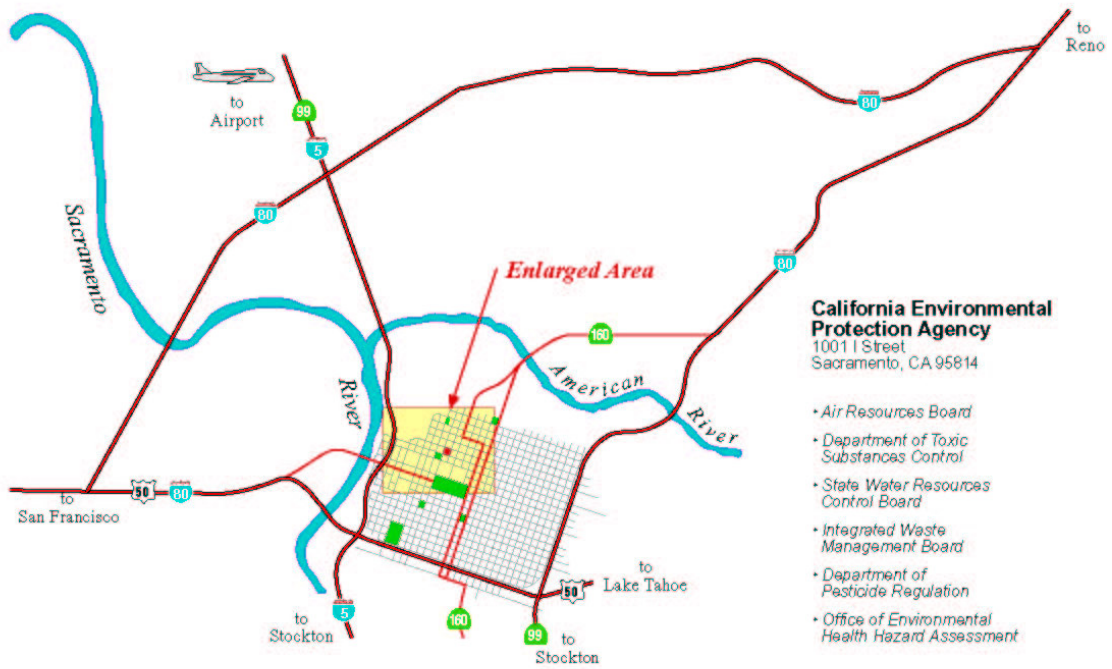
Mr. Larry Week, Chief
Native Anadromous Fish and Watershed Branch
California Department of Fish & Game
1416 9th Street, 12th Floor
Sacramento, CA 95814

California Environmental
Protection Agency
c/o Alan C. Lloyd, PhD
Secretary for Environmental Protection
1001 I Street, 25th Floor
Sacramento, CA 95814

City of Los Angeles
c/o Mr. David R. Pettijohn
Department of Water & Power
Water Resources Business Unit
111 North Hope Street, Room 1460
Los Angeles, CA 90012

Mandatory Hearings Mailing List
Miller Revocation Hearing A028669 (cont.)

Whitnie Henderson
Association of California Water Agencies
910 K Street, Suite 100
Sacramento, CA 95814-3577



Parking Lot Locations



Parking Lot Locations

- Lot 1 (7th & G St.)
- Lot 2 (7th & G St.)
- Lot A (7th & Capitol)
- Lot C (14th & H St.)
- Lot G (3rd & L)
- Lot H (10th & L)
- Lot I (10th & I, 11th & I)
- Lot K (6th & J/L, 7th & K)
- Lot P (2nd & I)
- Lot U (5th & J)
- Lot W (2nd & I St.)

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 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 Permittees, the Division's prosecution team, 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 that 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 two copies of a Notice of Intent to Appear, which must be received by the State Water Board no later than **noon on Tuesday July 12, 2005**. 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: (1) the name and address of the participant, (2) the name of each witness who will testify on the participant's behalf, (3) a brief description of the proposed testimony, and (4) an estimate of the time (not to exceed 20 minutes) that the witness will need to present a brief oral summary of the witness' testimony. The witness' testimony must be submitted in writing as described in Section 4

below. 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 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.

The State Water Board will mail a service list of parties to exchange information to each hearing party who has submitted a Notice of Intent to Appear. Hearing participants who intend to make only policy statements are not required to exchange information and will not receive testimony or exhibits from the parties. The service list will indicate which participants agreed to accept electronic service. No later than **noon on Thursday July 28, 2005**, 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 that 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.¹ 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: five paper copies of each of its exhibits or three 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

¹ 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.

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.

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 Thursday July 28, 2005**, 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. Additionally, such exhibits may be submitted to the State Water Board in electronic form, using a file format readable by Microsoft Office 97 software.
 - d. Exhibits that rely on unpublished technical documents will be excluded unless the unpublished technical documents are admitted as exhibits.
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 version supported by Microsoft Excel 97 (preferred) or Word 97. Electronic submittals to the State Water Board of documents less than 5 megabytes in size may be sent via electronic mail to: WrHearing@waterboards.ca.gov with a subject of “**Miller Revocation Hearing**”. Electronic submittals to the State Water Board of documents greater than 5 megabytes in size should be sent by mail, in PDF format, on ZIP™, JAZ™, or compact disk (CD™) media. Electronic service on participants shall be in the same format as submittals to the State Water Board, but should be submitted to the other participants by mail on CD.

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>.

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.
 - a. **Policy Statements:** Pursuant to California Code of Regulations, title 23, section 648.1, subdivision (d), 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.² Each participant 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 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

² 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.

³ 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.

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 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.
7. **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 non-controversial 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).)
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.

9. **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: Paul Murphey
Phone: (916) 341-5435
Fax: (916) 341-5400
Email: WrHearing@waterrights.swrcb.ca.gov
With Subject of “Miller Revocation Hearing”

NOTICE OF INTENT TO APPEAR

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

Miller Revocation Hearing

Scheduled for
Monday August 29, 2005

- 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) |
|------|-------------------------------|--------------------------------------|-------------------------|
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Name, Address, Phone Number and Fax Number of Attorney or Other Representative

Signature: _____ Dated: _____

Name (Print): _____

Mailing Address: _____

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

E-mail Address: _____

Exhibit Identification Index

Participant _____

| Exhibit No. | Description | Status as Evidence | | |
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