



Winston H. Hickox  
Secretary for  
Environmental  
Protection

# State Water Resources Control Board



Gray Davis  
Governor

## Division of Water Rights

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### NOTICE OF PUBLIC HEARING AND NOTICE OF PRE-HEARING ORIENTATION TOUR

The State Water Resources Control Board will hold a hearing regarding  
the California Department of Fish and Game's  
Lower Yuba River Fisheries Management Plan  
and a

Complaint by the United Group against Yuba County Water Agency  
and other diverters of water from the lower Yuba River in  
Yuba County

#### Pre-Hearing Field Orientation Tour

August 25, 1999 at 9:00 a.m.,  
to convene at  
Yuba County Water Agency  
1402 D Street  
Marysville, CA

A pre-hearing field orientation tour has been scheduled to familiarize the State Water Resources Control Board Hearing Officer and staff with the major water diversion facilities that affect the flows of the lower Yuba River within the Yuba County Water Agency service area. This tour is for orientation purposes only. All parties may be present during the tour but may not present testimony, evidence or arguments related to the issues to be considered at the hearing. If you wish to be present during the tour, you must arrange for your own transportation.

#### Public Hearing

Non-evidentiary policy statements<sup>1</sup>  
will be heard beginning at  
9:00 a.m., on  
September 8, 1999, at  
State Water Resources Control Board  
Paul R. Bonderson Building  
First-Floor Hearing Room  
901 P Street, Sacramento, CA

Presentation of evidence  
will be heard immediately following the policy  
statement session, on September 8, 1999,  
and continuing on  
September 9, 14 and 15, 1999, at 9:00 a.m.  
and continuing, if necessary, on  
September 28, 29 and 30, 1999, at 9:00 a.m., at  
State Water Resources Control Board  
Paul R. Bonderson Building  
First-Floor Hearing Room  
901 P Street, Sacramento, CA

<sup>1</sup> Policy statements are explained in item #10 of the attached "Information Concerning Participation".

## SUBJECT OF HEARING

The purpose of this hearing is to receive any relevant new information that should be considered by the State Water Resources Control Board (SWRCB) prior to adoption of a decision. Information regarding the following subjects is solicited.

- The condition of the fishery and other public trust resources of the lower Yuba River.
- The effects that the operations of New Bullards Bar Reservoir, Englebright Lake, and other diversions from the lower Yuba River downstream of Englebright Lake have on these resources.
- Appropriate revisions to water right permits and licenses, and changes in water diversion structures and practices needed to protect the fishery and other public trust resources.

## BACKGROUND

On February 23, 1988, the SWRCB received a complaint regarding fishery protection and water right issues on the lower Yuba River. The complaint was filed by a coalition of fishery groups referred to as the United Group<sup>2</sup>. The complainants' main contention is that the instream flow requirements in the Yuba County Water Agency's (YCWA) water right permits and the existing fish screening facilities do not provide an adequate level of protection for fishery resources in the lower Yuba River.

On May 8, 1991, the California Department of Fish and Game (DFG) requested that the SWRCB revise existing streamflow and temperature requirements on the lower Yuba River, in accordance with the recommendations set forth in the "Lower Yuba River Fisheries Management Plan" (DFG Plan) proposed by DFG. The SWRCB subsequently held a 14-day water right hearing beginning on February 10, 1992, to consider the long-term fishery protection recommendations in the DFG Plan and to address other issues raised by the United Group's complaint.

The SWRCB hearing included the receipt of testimony and other evidence from 15 parties and presentation of non-evidentiary policy statements regarding the issues under consideration. The evidentiary hearing concluded on June 8, 1992. Following submittal of legal briefs, the hearing record was closed on August 25, 1992.

On February 10, 1999, the Division distributed to all parties copies of the staff analysis and a draft decision relating to the issues addressed in the 1992 water right hearing. The draft decision would:

- Establish flow, temperature and ramping requirements that would be applied primarily to the water rights held by YCWA.
- Require YCWA and other local entities to develop workplans to describe measures to be taken to improve fish screens or to otherwise reduce fish losses at the major points of diversion from the lower Yuba River.

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<sup>2</sup> The United Group includes the following organizations: California Sportfishing Protection Alliance, United Anglers of California, Northern California Council Federation of Fly-Fishers, Fly Fishers of Davis, and E.C. Powell Fly-fishers

- Require measures to be taken by specified parties<sup>3</sup> that divert water from the lower Yuba River to comply with applicable legal requirements.

Due to the length of time since the close of the SWRCB's 1992 hearing, this supplemental hearing is being conducted to receive relevant new information that was not available at the time of the 1992 hearing.

### KEY ISSUES

1. What relevant new information is available regarding factors that influence population trends of the following species of anadromous fish present in the lower Yuba River: American Shad, Steelhead Trout, Spring-Run Chinook Salmon, Late-Fall Chinook Salmon, and Fall-Run Chinook Salmon?
2. What relevant new information is available regarding stream flow and water temperature requirements for the protection of fish in the lower Yuba River?
3. What relevant new information is available regarding the water diversion facilities, fish screens, fish ladders and fish losses at: (1) the Browns Valley Pumpline Diversion facility, (2) the South Yuba/Brophy Water District South Canal, (3) the North Canal which serves Hallwood, Cordua and Ramirez Districts, (4) the YG Development Co., and (5) the Daguerre Point Dam.
4. What relevant new information is available regarding existing and projected water supply requirements for irrigation, municipal use and waterfowl habitat within YCWA's service area?
5. What relevant new information is available regarding the effects of proposed and recommended fishery protection measures on the use of water for non-fishery purposes (i.e., (a) impacts to existing and projected water supply, power generation supply, and the local economy; and (b) impacts on recreation, wildlife, riparian vegetation and waterfowl habitat)?
6. What relevant new information is available regarding the water rights and diversions and uses of water by parties diverting water from the lower Yuba River?
7. What relevant new information related to the following subjects is available regarding the historic operation of New Bullards Bar Reservoir during the period 1969 to the present?
  - Total monthly inflow of water.
  - Total monthly losses of water (i.e., evaporation and seepage).
  - Total monthly storage releases of water. What are the components of monthly storage releases (i.e., power generation, in-basin uses, out-of-basin transfers, fishery use).
  - End-of-month storage volumes, end-of-month staff gage elevations, end-of-month surface areas.
  - Current staff gage elevation/surface area/reservoir capacity values for the reservoir.

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<sup>3</sup> The specified parties are: YCWA, Browns Valley Irrigation District, Brophy Water District, Cordua Irrigation District, South Yuba Water District, Rameriz Water District, and YG Development Company and Western Aggregates, Inc.

## HEARING PARTICIPATION

IF YOU WANT TO TAKE PART IN THIS HEARING you should carefully read the enclosure entitled "Information Concerning Appearance at Water Right Hearing". 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 SWRCB on or before July 21, 1999.

To facilitate exchange of testimony, exhibits and witness qualifications, on July 22, 1999, the SWRCB will mail out a list of those parties who have indicated an intent to participate in the hearing.

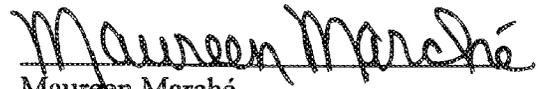
Copies of witnesses' proposed testimony, exhibits, list of exhibits, and qualifications must be served upon and received by the SWRCB and each of the parties who have indicated their intent to appear no later than August 9, 1999.

## PARKING AND ACCESSIBILITY

The enclosed maps show the locations of the Yuba County Water Agency's office in Marysville, and the Paul R. Bonderson building and public parking sites in Sacramento. The Paul R. Bonderson building first floor hearing room is accessible to persons with disabilities.

## IF YOU HAVE ANY QUESTIONS

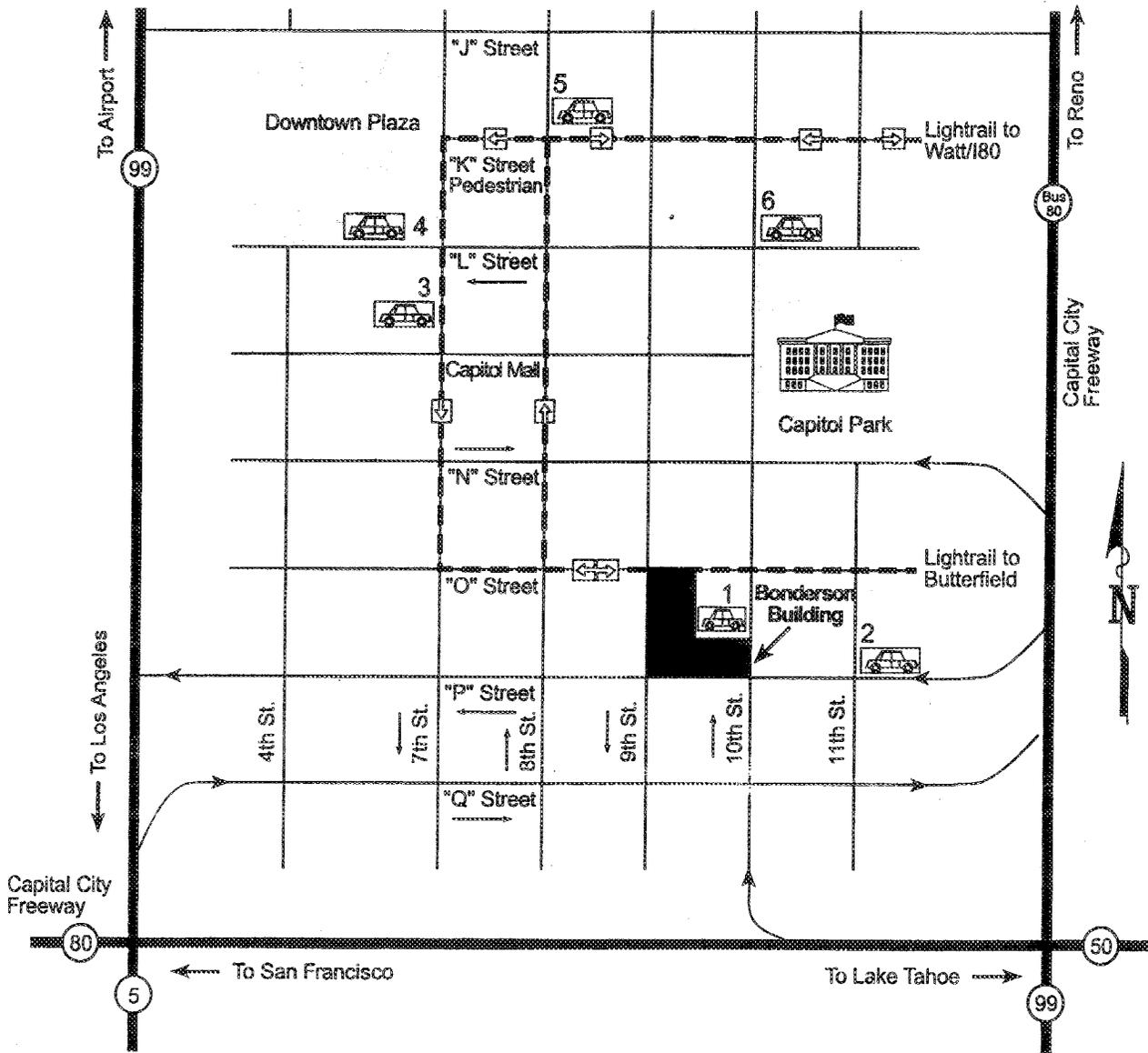
Questions concerning this notice may be directed to Ernest Mona at (916) 657-1947 (Licensing and Hearings Section).

  
Maureen Marché

Administrative Assistant to the Board

Enclosure

Date: July 1, 1999



## State Water Resources Control Board

Bonderson Building

901 P Street  
Sacramento

Parking:



1. State Garage  
\$0.75 per half hour
2. State Garage  
\$0.75 per half hour
3. \$6.00 per day max
4. \$6.00 per day max
5. \$5.50 per day max
6. \$6.00 per day max



Yuba County Water Agency  
1402 D Street  
Marysville, CA

## INFORMATION CONCERNING APPEARANCE AT WATER RIGHT HEARING

The following procedural requirements will apply to this hearing and will be strictly enforced by the SWRCB.

1. **PARTIES:** In accordance with section 648.1 of Title 23, California Code of Regulations, persons who want to be designated as a party to this hearing shall submit a Notice of Intent to Appear, written testimony, and exhibits in accordance with the requirements stated below, with a request to be designated as a party to the hearing. Persons who present only policy statements, either orally or in writing, will not be considered a party to the hearing.
2. **NOTICE OF INTENT TO APPEAR:** Each party intending to participate in the hearing must submit to the SWRCB ten copies of a written Notice of Intent to Appear (form enclosed). The notice must state the name and address of the attorney or other representative of the party, the name of each witness who will testify on such party's behalf, together with a description of the proposed testimony and the estimated amount of time required by the witness to present an oral summary of his or her written direct testimony. The notice must be received by the SWRCB by 5:00 p.m. on July 21, 1999. Only parties who submit a Notice of Intent to Appear will be included on the List of Parties to exchange evidence.

On July 22, 1999, the SWRCB will mail out a List of Parties intending to present evidence at the hearing to each of the other parties who have submitted a Notice of Intent to Appear indicating their intention to present evidence. Not later than 7 days thereafter, each party shall mail a copy of the party's Notice of Intent to Appear to each of the participating parties identified on the above-mentioned List of Parties.

3. **SUBMITTAL OF WRITTEN TESTIMONY, STATEMENTS OF QUALIFICATIONS, AND EXHIBITS:** The parties proposing to present evidence shall submit ten copies of their witnesses' written testimony and proposed exhibits to the SWRCB. In the case of an expert witness, the parties shall also submit ten copies of the witnesses' statement of qualifications to the SWRCB.

Each party shall also complete and submit the attached exhibit identification index along with the party's exhibits. The Status of Evidence column will be completed during the course of the hearing. Written testimony of each witness, the statement of qualifications for expert witnesses, and other exhibits will all be considered as proposed exhibits and shall all be identified on the exhibit identification index. Please Note: Exhibits previously entered into the record at the 1992 hearing need not be resubmitted. New exhibits for this hearing shall be designated with an "S" (for supplemental), followed by the abbreviation for the party submitting the exhibit, followed by the exhibit number. (e.g., "S-YCWA-1")

One copy of the written testimony, statements of qualifications, exhibits, and a complete list of exhibits, shall be submitted to each of the other parties designated on the List of Parties to be provided by the SWRCB. A statement of service, which indicates the manner of service on the parties, shall be filed with each party's exhibits.

All written testimony, statements of qualifications, other exhibits and a complete list of exhibits must be received by the SWRCB and mailed to the other parties no later than 5:00 p.m. on August 9, 1999.

At the time of the hearing, witnesses will be sworn and required to identify their written testimony as their own. Witnesses will be given a brief period to summarize or emphasize their written testimony on direct examination. Cross-examination will be permitted on the written submittals and any oral testimony. (See below)

Proposed exhibits are subject to the following requirements:

- a. Information 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. Bulletins and reports, which have been prepared and published by a governmental agency, if otherwise admissible, may be submitted as exhibits by reference provided that the original or copy is in the possession of the SWRCB.
  - c. Exhibits that rely on unpublished technical documents will be excluded unless the unpublished technical documents are admitted as exhibits.
  - d. If documents are submitted as exhibits by reference, the parties offering such documents shall advise the other parties with whom exhibits must be exchanged of the titles of the documents, the particular portions on which they rely, the nature of the contents, the purpose for which the exhibit will be used when offered into evidence, and the specific file folder or other exact location in SWRCB's files where the document(s) may be found.
4. **RULES OF EVIDENCE:** Evidence will be admitted in accordance with Government Code section 11513.
  5. **OPENING STATEMENTS:** All parties who present evidence in the hearing may make an opening statement. Oral presentation of opening statements will be limited to 20 minutes for each party. Opening statements may also be submitted in writing. Parties should use their opening statements to explain the objectives of the party's case, the major points that will be made, and the relationship between the major points and the key issues.
  6. **PRESENTATION OF EACH PARTY'S CASE-IN-CHIEF:** Each party shall present one case-in-chief on the Key Issues listed in the hearing notice. The presentation shall include all of the written testimony, exhibits, and oral summaries of written testimony relevant to the issues that the party intends to address. Oral presentation of the direct testimony of each witness shall be limited to a maximum of 20 minutes per witness, not to exceed a total of two hours for all witnesses presented by a party. The time allowed for the presentation of a party's case-in-chief may be extended upon a showing of good cause. The Hearing Officer will limit presentation of redundant testimony.

During the presentation of each party's case-in-chief, each witness shall identify his or her written testimony, affirm that the testimony is true and correct, and briefly summarize the

major points in the testimony. The written testimony shall be treated as direct testimony in its entirety.

7. **CROSS-EXAMINATION:** Each party will be subject to cross-examination immediately following the presentation of the party's case-in-chief. Cross-examination will be allowed by other parties presenting evidence, the SWRCB staff, and Board Members.

If a party presents multiple witnesses on a given subject area or closely related subject areas, those witnesses may be subject to cross-examination as a panel, at the discretion of the Hearing Officer. Cross-examination will be limited to 20 minutes per witness or panel of witnesses for each party conducting cross-examination. The time allowed for cross-examination will be extended upon a showing of good cause.

8. **REBUTTAL EVIDENCE:** Parties will have the opportunity to present rebuttal evidence. Parties must not use the opportunity to present rebuttal evidence to attempt to present new evidence that should have been included in the case-in-chief, or to present repetitive evidence. All rebuttal evidence will be subject to cross-examination in the same manner as for evidence presented during the party's case-in-chief.
9. **CLOSING ARGUMENTS:** Oral Closing statements shall not be made. An opportunity will be provided for submission of written closing statements and/or legal briefs following the close of the hearing. Ten copies of any closing statements or legal briefs shall be submitted to the SWRCB and one copy shall be mailed to each of the parties required to exchange information for this hearing. The schedule for submission of closing statements and legal briefs will be decided by the Hearing Officer at the close of the hearing.
10. **POLICY STATEMENTS:** Consistent with California Code of Regulations, Title 23, section 648.1(d), the SWRCB will provide an opportunity for presentation of policy statements or comments by interested persons who are not participating as parties. A policy statement is a nonevidentiary statement. It may include (1) the policy view and position of the speaker, or (2) non-expert analysis of evidence that already has been presented. Persons who wish to make only a policy statement may do so, subject to the following provisions in addition to the regulation:
  - a. Persons making nonevidentiary policy statements will not be sworn or asked to affirm the truth of their statement.
  - b. Persons making policy statements must not attempt to use their statements to present evidence of fact either orally or through introduction of written exhibits.
  - c. At the discretion of the Hearing Officer, questions may be addressed to persons making policy statements. However, such person shall not be subject to cross-examination.
  - d. Nonevidentiary policy statements are not subject to the prehearing requirements specified above for testimony or exhibits. All persons wishing to make policy statements, however, are requested to file a Notice of Intent to Appear on the enclosed form indicating clearly an intent to make only a policy statement, or call Mr. Ernest Mona at (916) 657-1947.
  - e. The SWRCB will hear nonevidentiary oral policy statements starting at 9:00 a.m. on September 8, 1999.

- f. A limit of ten minutes will be imposed on policy statements. Persons making policy statements are encouraged to have written copies of their statement available at the time they speak for distribution to the SWRCB.
11. **EX PARTE COMMUNICATION:** During the pendency of the proceeding, there will be no *ex parte* communications with Board members or staff of the SWRCB regarding substantive issues within the scope of the proceeding. Communications regarding solely procedural matters will be permissible, but ordinarily should be directed to SWRCB staff, not Board members.
12. **CONDUCT OF HEARING:** Except as provided herein, the proceeding will be conducted as closely as practicable to the procedures set forth in California Code of Regulations, Title 23, Sections 648-648.8, 649.6 and Sections 768-770. All parties and counsel should be mindful of the procedural standards set forth in Section 648.5:

“(a) Adjudicative proceedings shall be conducted as the Board deems most suitable to the particular case with a view toward securing relevant information expeditiously without unnecessary delay and expense to the parties and to the Board...”

Failure to submit witness information and exhibits in a timely manner may be interpreted by the SWRCB as intent not to appear. If there is any change in the hearing schedule, only those persons who have filed a Notice of Intent to Appear will be informed of the change.

Materials submitted to the SWRCB should be addressed as follows:

Division of Water Rights  
State Water Resources Control Board  
P.O. Box 2000  
Sacramento, CA 95812-2000  
Attn: Ernest Mona  
Phone: (916) 657-1947  
Fax: (916) 657-1485  
Email: [emona@waterrights.swrcb.ca.gov](mailto:emona@waterrights.swrcb.ca.gov)

**NOTICE OF INTENT TO APPEAR**

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

**LOWER YUBA RIVER**

Scheduled for  
September 8, 9, 14 and 15, 1999 and, if necessary, September 28, 29, and 30, 1999

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

NAME	SUBJECT OF PROPOSED TESTIMONY	ESTIMATED LENGTH OF DIRECT TESTIMONY	EXPERT 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

.....  
.....  
.....  
.....

\* For each person testifying as an expert witness please attach a list of his/her qualifications.

Participant \_\_\_\_\_

Exhibit No.	Description	Status as Evidence	
		Introduced	Accepted

## EXHIBITS PREVIOUSLY OFFERED INTO EVIDENCE

1. **1992 Hearing Record:** The hearing scheduled for September 8, 9, 14, 15, 28, 29 and 30, 1999 is a continuation of the SWRCB proceeding held in 1992 on the lower Yuba River. The transcripts and exhibits from the SWRCB's 1992 hearing on the lower Yuba River [File No. 262.0 (58-08)] will be included in the record for the present proceeding and previously admitted exhibits need not be resubmitted.

2. **SWRCB Staff Exhibits:** The SWRCB staff exhibits admitted into the record as exhibits by reference at the 1992 hearing were identified as follows:

1. All water right files related to:
  - a. Complaint by United Groups against YCWA, and others. [File No. 262.0(58-08-03)]
  - b. Geologic evaluation of underflow of the Yuba River, memo dated January 8, 1980 [File No. 262.0 (58-08-02)]
  - c. Complaint by California Sportfishing Protection Alliance against Yuba County Water Agency. [File No. 262.21]
  - d. Staff Report, Lower Yuba River, dated August 1991.
  - e. YCWA's Applications 2197, 3028, 5004, 5631, 5632, 9516, 10282, 15204, 15205, 15563, and 15574.
  - f. South Yuba Water District's and Brophy Water District's Applications 27316 and 27317.
  - g. Hallwood Irrigation Company's Application 9899.
  - h. Cordua Irrigation District's Applications 9927 and 12371.
2. Topographic Maps published by the United States Geological Survey covering the area under consideration.
3. United States Geological Survey, "Water Resource Data, California" for the period of published record.
4. U.S. Department of Commerce, National Oceanic and Atmospheric Administration, "Climatological Data of California" for the period of published record.
5. DWR Bulletin No. 230, "Index to Sources of Hydrologic Data" and all pertinent data available from the water Data Information System and all predecessor publications (Bulletins Nos. 130 and 23).
6. Water Quality Control Plan, Central Valley Region, as originally approved by the State Water Resources Control Board, and any amendments thereto.
7. California Department of Fish and Game, "Lower Yuba River Fisheries Management Plan", February 1991.

3. **Supplemental Information in SWRCB Staff Exhibits:** The SWRCB staff exhibits for the present hearing will be designated by the same Exhibit Identification Numbers specified above. Where the identified exhibits have been supplemented with more recent information following the 1992 hearing, the staff exhibits offered into evidence for the present hearing will include the more recent information.