



State Water Resources Control Board



Linda S. Adams
Secretary for
Environmental Protection

Division of Water Rights
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Arnold Schwarzenegger
Governor

NOTICE OF PETITIONS TO REVISE DECLARATION OF FULLY APPROPRIATED STREAM SYSTEMS

Notice is hereby given that five (5) petitions to request revision of the fully appropriated stream status of the Kern River stream system have been filed with the State Water Resources Control Board (State Water Board). The petitioners are listed below:

<p>North Kern Water Storage District and City of Shafter P.O. Box 81435 Bakersfield, CA 93380-1435</p>	<p>City of Bakersfield c/o Colin L. Pearce Duane Morris LLP One Market, Spear Tower Suite 2000 San Francisco, CA 94105-1104</p>
<p>Buena Vista Water Storage District c/o Terry Chicca, President P.O. Box 756 Buttonwillow, CA 93206</p>	<p>Kern Water Bank Authority c/o Kevin M. O'Brien Downey Brand LLP 555 Capitol Mall, 10th Floor Sacramento, CA 95814</p>
<p>Kern County Water Agency c/o Stuart L. Somach Somach, Simmons & Dunn 813 Sixth Street, Third Floor Sacramento, CA 95814</p>	

Kern River Fully Appropriated Stream Status

Since the 1870's, water from the Kern River has been diverted and beneficially used under claimed pre-1914 appropriations. Since then, the water diversions from the river have been apportioned by numerous court decisions and agreements. As of October 1964, the State Water Board determined the Kern River system to be fully appropriated pursuant to Water Right Decision 1196. Decision 1196 provided information indicating that the Kern River was fully appropriated year-round, and consequently under the decision, several water right applications seeking to appropriate water from the river were denied. Decision 1196 was later affirmed by State Water Board Order WR 89-25 dated November 16, 1989, the Declaration of Fully Appropriated Streams (Declaration). Order WR 89-25 was updated with Order WR 91-07, and most recently updated with Order WR 98-08, which incorporates the previous Declarations.

Petitions to Revise Fully Appropriated Stream Declaration

In 1976, Kern Delta Water District (Kern Delta) obtained pre-1914 water rights from various entities that held rights on the Kern River. However, there were claims that the water rights Kern Delta obtained were not fully utilized by the previous right holders. Consequently, when Kern Delta proposed to increase the use of Kern River water under its newly-acquired water rights, North Kern Water District (North Kern) filed an action with the Tulare County Superior Court: *North Kern Water Storage District v. Kern Delta Water District* (Case No. 96-172919). With the filing, North Kern sought a judgment that the pre-1914 rights Kern Delta had acquired were partially forfeited by historical nonuse, and therefore Kern Delta could not increase historical diversion quantities. North Kern further proposed that water forfeited by Kern Delta would then be available for appropriation.

Following several court judgments and appeals of North Kern's case, on April 25, 2007, the California Supreme Court denied all further petitions for review resulting in the last judgment becoming final. Thus, the Fifth District Court of Appeal's February 2, 2007 decision is final. The Appellate Court judgment affirmed that there was a partial forfeiture of Kern Delta's pre-1914 water rights. The Court of Appeal further ruled that although the court determined water had been forfeited by Kern Delta's predecessors, the State Water Board was the agency responsible to determine whether the forfeiture would affect the status of the Kern River as fully appropriated pursuant to the Declaration.

The five petitions above and supporting information were subsequently filed to request revision of the Kern River's fully appropriated status in the Declaration. The petitioners also filed water right applications to appropriate water from the Kern River in the event that the State Water Board holds a hearing and determines that the Declaration should be revised.

Pursuant to California Code of Regulations, title 23, division 3, chapter 2, section 871(c)(1), the Chief of the Division of Water Rights (Division) will determine whether reasonable cause exists to conduct a hearing on the question of whether the Declaration should be changed. Should the Division Chief determine cause exists for such a hearing, a notice of hearing on the issue will be prepared and distributed in accordance California Code of Regulations, title 23, division 3, chapter 2, section 871(c)(4).

Contact Person

Copies of the petitions, applications and supporting information are available through the Kern River FAS Petitions link at: <http://www.waterrights.ca.gov/application/petnot.htm>. The contact person for this matter is Kate Gaffney at (916) 341-5360, or by e-mail at kgaffney@waterboards.ca.gov.

Comments regarding the petitions should be submitted to the Division by **January 31, 2008**.

Date of Notice: November 30, 2007