



Linda S. Adams  
Secretary for  
Environmental Protection

# State Water Resources Control Board

2/17/09 Bd Mtg Item 7  
Auburn Dam Project  
Deadline: 2/10/09 by 12 noon

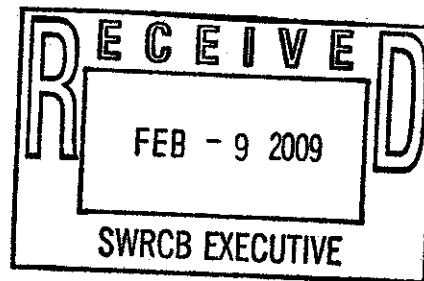


Arnold Schwarzenegger  
Governor

## Office of Chief Counsel

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Jeanine Townsend  
Clerk to the Board  
State Water Resources Control Board  
P.O. Box 100  
Sacramento, CA 95812-0100



Subject: COMMENT LETTER – 2/17/09 BOARD MEETING: AUBURN DAM PETITION  
DRAFT ORDER

Dear Ms. Townsend:

The Division of Water Rights Prosecution Team supports the State Water Resources Control Board's Draft Order Denying Petition for Reconsideration of Order WR 2008-0045 and urges the Board to promptly adopt the Draft Order as written.

The Prosecution Team would like to note that the Draft Order's conclusion that the revocation order need not address whether the revocation makes water available for appropriation is consistent with the holding in *North Kern Water Storage District v. Kern Delta Water District* (2007) 147 Cal.App.4th 555, 583 [54 Cal.Rptr. 578] that forfeiture of a senior water right does not necessarily make water available for appropriation.

The Prosecution Team would also like to note for the record its support of the point made in footnote one of the Draft Order. A lack of prior enforcement action by the Board should not militate against a current enforcement action, nor should a lack of prior enforcement excuse a failure of diligence on the part of the party against whom enforcement action now is being taken.

Due to an unavoidable scheduling conflict, I will be unable to attend the Board Meeting scheduled for February 17, 2009. Other Prosecution Team members will be available to answer any questions, and the Prosecution Team is not requesting a continuance.

David Rose  
Staff Counsel  
STATE WATER RESOURCES CONTROL BOARD

*California Environmental Protection Agency*