

Oral Testimony

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Water Right Hearing Regarding Proposed Revocation of Auburn Dam Project Permits

July 21 and 22, 2008

Before the State Water Resources Control Board

Almost exactly ten years ago, the California Sportfishing Protection Alliance filed a protest against an extension of time for the water rights whose revocation is under consideration today. In that crafting that protest, CSPA was incredulous that the Board would allow a set of permits to languish for 27 years with no apparent prospect that the water permitted would be put to beneficial use as proposed.

Ten years later, after what is now 37 years, there is no project, no prospect of a project, no Congressional interest in a project, no federal funding for a project, no funding partners for a project, and no environmental documentation for a project.

Diligence does not mean, and must not mean, conforming to those aspects of State Board direction that one chooses or finds convenient to fulfill. In 1984, the Board directed the Bureau to obtain preliminary approval from the Board for new project design before taking a project to Congress. The Bureau did not. In 2001, the Board directed the Bureau to prepare environmental documentation for a project. The Bureau did not, maintaining consistently that the prerequisite for diligent pursuit of its project was authorization of funding by Congress. Diligence according to the Bureau has literally come to mean waiting for an act of Congress.

The question must be asked: who interprets, carries out, and enforces the Water Code, the Board or the Bureau? In my opinion, the Bureau is not asking for discretion on the part of the Board; it is asking for abdication.

In no small measure, CSPA has represented the public interest in this proceeding by insisting on good process. This is consistent with a role CSPA has played vis-a-vis the Board on many issues on many occasions. It is flatly unacceptable that it took the Board ten years to act on a simple protest to extend the time to put to use. Recently, the Board has begun to put an end to allowing permittees to indefinitely extend their permits. For CSPA, this cannot happen soon enough.

The draft *California Water Boards' Strategic Plan Update 2008-2012* states:

Goal 6. Enhance consistency across the Water Boards on an ongoing basis, to ensure our processes are effective, efficient and predictable, and to promote fair and equitable application of the laws, regulations, policies and procedures.

What goes across the various boards goes within the State Board, and what goes for all the small water rights that have been revoked in the last couple of years must also go for the Bureau.

No reasonable possibility remains today that the projects contemplated in the Auburn water rights will be completed.

Each of the parties designated as a potential primary beneficiary of Auburn Dam has moved on.

D 1356 speculated that there would be possible fisheries benefits to an East Side Canal. Others have speculated that there could be fisheries benefits for the lower American River in completing Auburn Dam. There is an explicit requirement in D 893 that the United States provide "releases past Nimbus Dam sufficient at all times to satisfy ... requirements for fish conservation." The abusive pattern on the part of the water development community, which invariably proposes to create new developments in order to comply with the requirements of previous developments, must be answered instead with diligent enforcement by the Board of already existing applicable law. The idea that we need an Auburn Dam to make possible a flow standard for the lower American River is unacceptable.

Thank you.