

State of California
 State Water Resources Control Board
DIVISION OF WATER RIGHTS
P.O. BOX 2000, Sacramento, Ca. 95812-2000
 Info: (916) 341-5300, FAX: (916) 341-5400, Web: <http://www.waterrihts.ca.gov>

PROTEST – (Petitions)

BASED ON ENVIRONMENTAL OR PUBLIC INTEREST CONSIDERATIONS
 Protests based on Injury to Vested Rights should be completed on other side of this form

APPLICATIONS: 18085 and 18087 PERMITS: 13856 and 13858

We, the California Sportfishing Protection Alliance; Chris Shutes, 1608 Francisco St., Berkeley, CA 94703; Bill Jennings, 3536 Rainier Ave, Stockton, CA 95204; and Michael Jackson, P.O. Box 207, 429 West Main St., Quincy, CA 95971. (Name and address of Protestant)

have read carefully the May 14, 2009 notice relative to a petition for temporary change of **Placer County Water Agency**, under applications 18085 and 18087 for permits 13856 and 13858, to transfer water from present points of diversion, as listed immediately below, to the **San Diego County Water Authority**.

For both permit 13856 and permit 13858,

A. PCWA’s current points of diversion are located at California Grid Coordinates, Zone II,

Mount Diablo B&M:

		N	E	Quart.	Sec.	T-N	R-E
Duncan Creek	Duncan Creek	538,130	2,431,040	NW SW	24	15	13
M.F. American River	French Meadows	530,100	2,434,250	NW NE	36	15	13
Rubicon River	Hell Hole	510,750	2,452,000	SW SE	16	14	14
M.F. American River	Ralston Interbay	498,137	2,397,300	NW NE	35	14	12
M.F. American River	Ralston Afterbay	490,160	2,357,100	NW NW	3	13	11
N.F. American River	Auburn	444,400	2,267,400	NE SW	23	12	8

B. PCWA’s current points of rediversion are located at California Grid Coordinates, Zone II, Mount Diablo B&M:

		N	E	Quart.	Sec.	T-N	R-E
M.F. American River	French Meadows	530,100	2,434,250	NW NE	36	15	13
Rubicon River	Hell Hole	510,750	2,452,000	SW SE	16	14	14
M.F. American River	Ralston Interbay	498,137	2,397,300	NW NE	35	14	12
M.F. American River	Ralston Afterbay	490,160	2,357,100	NW NW	3	13	11
N.F. American River	Auburn	444,400	2,267,400	NE SW	23	12	8
American River	Folsom Dam	380,461	2,240,626	SW NE	24	10	7

It is desired to protest against the approval thereof because to the best of our information and belief:

The proposed application/petition for water will:

- (1) not be within the State Water Resources Control Board's (SWRCB) jurisdiction
- (2) not best serve the public interest** **x**
- (3) be contrary to law** **x**
- (4) have an adverse environmental impact** **x**

State Facts, which support the foregoing allegations:

A temporary transfer is requested by Placer County Water Agency (PCWA) to the San Diego County Water Authority (SDCWA) in the amount of 20,000 acre feet. An equivalent amount was transferred in 2008 to Westlands Water District, and a similar amount was transferred through Delta pumps by petitioner in 2001.

In the present event, the transfer is made simultaneous to numerous transfers being requested through the Drought Water Bank (DWB). Among the DWB transfers is one noticed by the Board on June 4, 2009, to transfer 12,000 of water, otherwise destined for groundwater infusion by South Sacramento Water District, from storage in PCWA reservoirs. The proposed transfer from PCWA to SDCWA is thus one of many simultaneous transfers whose cumulative effects have not been analyzed. Therefore, the exemption from environmental review under CEQA, on the grounds of de minimis impact as claimed by petitioner, and temporary urgency and transfer from storage as claimed in the Notice issued by the SWRCB, is without legal or substantive basis. Lack of environmental review is not in the public interest, since environmental review is one of the cornerstones of protecting the public interest.

In addition, the petition seeks to add points of diversion in the State Water Project (SWP) and a point of storage in the Central Valley Project (CVP). Because such consolidation has no legislative authorization, and also because it has not been analyzed under NEPA or CEQA, it is contrary to law.

The proposed transfer has potential significant impacts, particularly when considered cumulatively with an apparently increasing number of proposed transfers to the Drought Water Bank. These include impacts to Delta pelagic fisheries, notably several listed species such as Delta smelt, by increasing the amount of water exported through the SWP and CVP South Delta facilities. These actions will further degrade existing water quality and will increase entrainment of both pelagic fishes and migrating anadromous salmonids. These include Central Valley Chinook salmon, whose returns have dropped to catastrophic levels, and listed species including Central Valley steelhead, Spring-run Chinook salmon, and Winter-run Chinook salmon. The individual and cumulative effects of the ensemble of proposed transfers have not been analyzed for their impacts on listed species in particular.

On June 4, 2009 the National Marine Fisheries Service issued an 880-page Biological Opinion for the Operations Criteria and Plan of the CVP and SWP, for Central Valley steelhead, green sturgeon and Winter-run and Spring-run Chinook salmon. Analysis is required to determine whether the contemplated transfer from PCWA to SDCWA violates or is inconsistent with the Reasonable and Prudent Alternative put forth in this Biological Opinion.

The proposed transfer may also have impacts within the American River watershed. The petitioner states that most water will likely be transferred in June through September of 2009. This is a time period when flows in the Lower American River are typically high, in order to support irrigation demand by the CVP. In 2008, Folsom Reservoir was severely drawn down in the summer, leaving insufficient water to maintain streamflows and

causing elevated water temperatures in the lower American River in the fall period when spawning anadromous salmonids entered the river. Water that is released over the summer is not available for use in the critical fall time period.

This is the third year in eight, and the second in a row, in which PCWA has transferred 20,000 acre feet out of basin for rediversion through Delta pumps. In more than half of the dry years over the last ten, therefore, PCWA has transferred 20,000 afy out of basin through the Delta pumps. This is sufficient to call this a consistent pattern of water sales in dry water years. As such, it should not be subject to the CEQA exemption accorded to temporary changes, but rather should be analyzed under CEQA for its long-term and other cumulative effects.

PCWA contracts with Pacific Gas & Electric Company for over 100,000 acre-feet per year of water from Yuba-Bear/Drum-Spaulding system. This water is exported from the Yuba River watershed through the Drum Canal, which originates at Spaulding Reservoir. At least 20,000 afy of this water is delivered through the South Canal below Wise Powerhouse on Auburn Ravine, to the PCWA service area southwest of Auburn.

PCWA has recently constructed a new facility that can make deliveries of up to 50 cfs from the former Auburn Dam site on the North Fork American, downstream of Middle Fork American confluence, through the Auburn Tunnel to the South Canal just below Wise Powerhouse, at a point directly adjacent to the Auburn Wastewater Treatment Plant. Water from the Middle Fork Project could therefore be used to replace water that is currently exported from the Yuba system. The South Yuba River has been officially proposed for 303(d) listing by the Central Valley Regional Water Quality Control Board as temperature-impaired. Temperature monitoring performed for the Upper Yuba River Studies Program, and for the relicensing of the Yuba-Bear and Drum-Spaulding hydroelectric projects, has shown that summer water temperatures in the South Yuba River routinely exceed standards for cold freshwater habitat for almost the entire length of the river from just downstream of Lake Spaulding all the way to Englebright Reservoir. Export of water from this impaired watershed, when other options are available for consumptive use in the area of destination, constitutes unreasonable use of water, contrary to the Water Code.

PCWA has the ability to supply water to Auburn Ravine through the Auburn Tunnel at a point just upstream of the Auburn Wastewater Treatment Plant. Each fall after the irrigation season ends on about October 15, outages in the Drum-Spaulding delivery system substantially de-water Auburn Ravine.

Under what conditions may this protest be disregarded and dismissed? 1. Petitioner shall produce an environmental impact report analyzing its repeated practice of transferring 20,000 acre-feet of water out of basin in dry years using SWP and/or CVP Delta pumps. 2. Petitioner shall renegotiate its contract with Pacific Gas & Electric Company for consumptive water from the Drum-Spaulding system, and reduce its contracted amount of consumptive water therefrom by a minimum of 20,000 acre-feet per year. 3.. Petitioner shall agree to provide water to Auburn Ravine from the American River, to be delivered through its pumping station adjacent to the Auburn Wastewater Treatment Plant, during outages of the Drum-Spaulding system. 4. To protect anadromous and resident salmonids in Auburn Ravine, petitioner shall negotiate a flow schedule for Auburn Ravine downstream of Auburn WWTP, which it shall be individually responsible for meeting for the annual time period of October 15 through December 31.

A true copy of this protest has been served upon the petitioner by mail.

(Personally or by mail)

Date: June 9, 2009.

Chris Shutes, FERC Projects Director,
Bill Jennings, Executive Director
Michael Jackson
California Sportfishing Protection Alliance

Chris Shutes
(signed on his own behalf and for
Bill Jennings and Michael Jackson)

Protestant(s) Authorized Representative sign here

Certificate of Service

I hereby certify that on this day, June 9, 2009, I, Chris Shutes, have placed in first class mail at Berkeley, California, a true copy of this protest mailed to:

Placer County Water Agency
c/o Hanspeter Walter
Kronick, Moskovitz, Tiedemann & Girard
400 Capitol Mall, 27th Floor
Sacramento, CA 95814

Chris Shutes