

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.waterrights.ca.gov>

**PROTEST – (Petitions)**

**BASED ON ENVIRONMENTAL OR PUBLIC INTEREST CONSIDERATIONS**

APPLICATION: 5629 PERMIT: 16480  
APPLICATION: 14444 PERMIT: 16480  
APPLICATION: 5630 PERMIT: 16478  
APPLICATION: 14443 PERMIT: 16479  
APPLICATION: 14445A PERMIT: 16481  
APPLICATION: 17512 PERMIT: 16482

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, have read carefully the August 19, 2010 notice relative to the petitions for extension of time of the **State Water Project of the Department of Water Resources** for above-listed permits under the above-listed applications. The summaries of the permits, including counties, places of use, points of diversion, amounts, and seasons are given in the Notice for these petitions, which is available on the Board’s website at [http://www.swrcb.ca.gov/waterrights/water\\_issues/programs/applications/petitions/2010/5629not.pdf](http://www.swrcb.ca.gov/waterrights/water_issues/programs/applications/petitions/2010/5629not.pdf).

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:**

In Water Rights Order WR 2008-045, the State Water Resources Control Board described the law regarding petitions for extension of time:

The Board’s regulations provide that the Board will grant a petition for an extension of time only upon such conditions as the Board determines to be in the public interest, and only upon a showing that (1) due diligence has been exercised, (2) failure to comply with previous time requirements was caused by obstacles which could not reasonably be avoided, and (3) satisfactory progress will be made if an extension is granted. (Cal. Code Regs., tit. 23, § 844.)

There is no definition of a project that will be analyzed under CEQA in support of the requested permit extensions. However, petitioner states that it anticipates that it will construct no new facilities within the time period covered by its request for a five-year extension of time on the subject permits.

If new facilities are contemplated, then these petitions are legally incomplete since they do not include descriptions of the new facilities, points of diversion and rediversion, and other relevant information necessary to understand operation and impacts of such new facilities; in such case, these petitions should be denied.

Assuming that no new facilities will be constructed during the next five years pursuant to these permits, there is no reasonable expectation that petitioner will increase the amounts of maximum use compared to previous use during the allowed time for the permit. Since no “satisfactory progress will be made if an extension is granted,” the petitions should be denied. Moreover, if petitioner were to divert amounts greater than the maximum amount diverted heretofore under any aspects of the affected permits, whether direct diversion or to storage, this would have adverse environmental impacts and be contrary to the public interest.

In the petitions, petitioner analyzes the aspects of the subject permits where maximum permitted use has been achieved, and those aspects where maximum permitted use has not.

Water use under Permit 16477 (Application 5629) has already reached the maximum rate of direct diversion and maximum amount of storage. There is no need to extend the time for this permit; it should be licensed subject to conditions resulting from a public trust analysis by the State Board.

Water use under Permit 16478 (Application 5630) has also already reached the maximum rate of direct diversion and maximum of storage. There is no need to extend the time for this permit; it should also be licensed subject to conditions resulting from a public trust analysis by the State Board.

Direct diversion at Oroville Dam under Permit 16479 (Application 14443) has already been achieved. “Maximum annual diversion to storage from the Feather River at Lake Oroville is 2,488,607 AF during the 1977/78 water year” (Petition for 5630 et al, Supplement, point 5). 1977 was the driest water year in recorded history in California. There is no hydrologic or operational explanation that would support a reasonable expectation of increasing the annual amount diverted to storage at that facility. Given DWR’s own advocacy of the importance of maintaining the coldwater pool in Oroville, withdrawals from Oroville that would occasion exceedence of the previous maximum diversion to storage would have a clear adverse environmental impact to fisheries downstream of Oroville Dam, and such impact would not be in the public interest.

Diversion to storage at San Luis Reservoir from Delta Channels has already exceeded the maximum storage amount allowed under Permit 16479 (Application 14443). The direct

diversion from Delta Channels of the maximum amount allowed under this permit would have an adverse environmental impact and would not be in the public interest. Indeed, the recent Delta Flow Informational Proceeding, its extensive record, and the resulting Delta Flow Criteria Report (*Development of Flow Criteria for the Sacramento-San Joaquin Delta Ecosystem*, approved by the Board August 3, 2010) demonstrate that existing and historic levels of diversion by the State Water Project from Delta Channels has had tremendous adverse environmental impacts; increased diversion through these facilities would clearly have adverse environmental impacts on a Delta ecosystem in crisis, impacts that would not be in the public interest.

Permit 16479 (Application 14443) should therefore be licensed, subject to reductions and other appropriate conditions pursuant to a public trust analysis that should be conducted by the State Board.

Direct diversion at Oroville Dam under Permit 16480 (Application 14444) has also already been achieved. “Maximum annual diversion to storage from the Feather River at Lake Oroville is 2,488,607 AF during the 1977/78 water year” (Petition for 5630 et al, Supplement, point 5). 1977 was the driest water year in recorded history in California. There is no hydrologic or operational explanation that would support a reasonable expectation of increasing the annual amount diverted to storage at that facility. Given DWR’s own advocacy of the importance of maintaining the coldwater pool in Oroville,<sup>1</sup> withdrawals from Oroville that would occasion exceedence of the previous maximum diversion to storage would have a clear adverse environmental impact to fisheries downstream of Oroville Dam, and such impact would not be in the public interest. Permit 16480 (Application 14444) should therefore also be licensed subject to conditions resulting from a public trust analysis by the State Board.

Water use under Permit 16481 (Application 14445A) has already reached the maximum rate of direct diversion and maximum amount of storage. There is no need to extend the time for this permit; it should be licensed subject to conditions resulting from a public trust analysis by the State Board.

Water use under Permit 16482 (Application 17512) is not described in the subject petitions. However, it has likely already reached the maximum amount of storage or something very close to it. Either there is no need to extend the time for this permit, and it should be licensed for that reason; or else full use of maximum annual storage amounts would have adverse fish and wildlife impacts at San Luis Reservoir, and would likely have adverse environmental impacts due to Delta pumping, and it should be licensed for that reason. In the latter case, the permit should be licensed subject to conditions resulting from a public trust analysis by the State Board.

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<sup>1</sup> See Comments of Mark Cowin, DWR, on draft *Delta Flow Criteria Report*, July 29, 2010, p. 2. [http://www.waterboards.ca.gov/waterrights/water\\_issues/programs/bay\\_delta/deltaflow/docs/comments072910/mark\\_cowin.pdf](http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/deltaflow/docs/comments072910/mark_cowin.pdf)

In the Supplement to Petition of Extension of Time for Permit 16477 (Application 5629), and Permit 14444 (Permit 16480), petitioner states that DWR must “maintain operational flexibility to meet DWR contractual obligations, and maximize power generation to allow the SWP to reduce its reliance on fossil fuel based power sources to meet the Project’s annual power demand.” However, the more contractual obligations DWR meets, the greater the need for fossil fuel-based power generation it creates, because the State Water Project consumes more power than it produces. The petitions do not describe how flexibility can be achieved by increasing diversions, or how greater diversions under the permits will decrease use of fossil fuel for power generation; they simply state a generality based on a generalization of a public interest. The same Supplement also states that “sufficient demand exists for the power that could be generated by maximum diversions authorized under the Power Permits.” It is not in the public interest for DWR to be given special dispensation to be allowed to justify its time extension petition based on demand alone; it must demonstrate that “satisfactory progress will be made if an extension is granted,” just as every other petitioner for extension of time must demonstrate. DWR has made no such showing whatever.

DWR’s discussion of the complexity of the State Water Project equally should not be grounds to grant DWR special dispensation. In addition, the speculated future of the State Water Project has no appropriate place in the subject petitions. The Supplement to the Petition for Application 5630 et al states: “The Delta Plan is intended to further restoration of the Delta ecosystem and a reliable water supply. The implementation of the Delta Plan is likely to influence future construction of SWP facilities and SWP water supply delivery.” However, Attachment 1 to the same petition says: “The project does not involve the construction of any new facilities or expansion of authorized uses beyond those currently authorized under the permits listed above.” Speculated future actions or changes related to the State Water Project have no place in the subject petitions, and should be ignored by the Board in considering these petitions on the merits.

**Under what conditions may this protest be disregarded and dismissed?**

1. Complete project-specific environmental documentation for the extension of time of these permits must be completed. A full range of alternatives, including reduced use of the permits, must be analyzed in a manner that is compliant with CEQA. CSPA reserves the right to revise or add to its dismissal terms based on review of environmental documents.
2. DWR must complete an accounting of water used under each permit, and describe how it plans to use additional water in the future. CSPA reserves the right to revise or add to its dismissal terms based on analysis of that accounting.
3. The petitions for extension of time should be denied, and the permits should be licensed for operation that is consistent with applicable law, including the Public Trust Doctrine, The Clean Water Act, Section 5937 of the Fish and Game Code, the California Water Code (and particularly its provision in Section 275 against unreasonable method of diversion), salinity standards under D-1641, and the Porter-Cologne Water Quality

Control Act. The licenses should be required to comply with all applicable Biological Opinions.

A true copy of this protest has been served upon the petitioner by mail.  
(Personally or by mail)

Date: October 13, 2010.

Chris Shutes, Water Rights Advocate  
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

cc:  
Erick D. Soderlund  
Department of Water Resources  
1416 Ninth St.  
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