



California Sportfishing Protection Alliance

"An Advocate for Fisheries, Habitat and Water Quality"

Chris Shutes, Water Rights Advocate

1608 Francisco St., Berkeley, CA 94703

Tel: (510) 421-2405 E-mail: blancapaloma@msn.com

<http://calsport.org/news/>

November 14, 2019

Ms. Angela Somma
Ms. Monica Gutierrez
NMFS California Central Valley Office
Attn: Calaveras River Habitat Conservation Plan,
650 Capitol Mall, Suite 5-100,
Sacramento, CA 95814.
Calaveras.HCP@noaa.gov
Via e-mail

Re: Comments of California Sportfishing Protection Alliance on Habitat Conservation Plan for the Calaveras River

Dear Ms. Somma and Ms. Gutierrez:

The California Sportfishing Protection Alliance (CSPA) respectfully submits these comments on the Habitat Conservation Plan for the Calaveras River (HCP). Notice of the HCP was published in the Federal Register on September 30, 2019 (RIN 0648–XR041).

The HCP seeks protection under the federal Endangered Species Act for incidental take of threatened Central Valley steelhead and species of concern fall-run Chinook salmon that regularly inhabit the Calaveras River in Calaveras and San Joaquin counties, California. The HCP also seeks ESA protection for incidental take of endangered Central Valley winter-run Chinooks salmon, threatened Central Valley spring-run Chinooks salmon, and species of concern late-fall-run Chinook salmon, none of which frequently inhabit the Calaveras River but which may at times stray into the river. The HCP proposes a series of conservation strategies and avoidance measures to protect salmon and *O. Mykiss* in the Calaveras River, Mormon Slough, the Stockton Diverting Channel, Old Calaveras River, and specified other interconnected and adjoining waters. The HCP proposes to issue Stockton East Water District (SEWD or District) a 50-year Incidental Take Permit which would protect the District from claims under the ESA in connection with the District's Calaveras River operations.

Despite defects in the HCP as described below and CSPA's recommendation that SEWD and the National Marine Fisheries Service (NMFS) revise it, CSPA appreciates the fact that an HCP is now available for comment.

I. Background on CSPA and the Calaveras River

CSPA has a longstanding history of concern over the condition of salmon and *Oncorhynchus mykiss*¹ fisheries in the Calaveras River. On March 22, 2000, CSPA submitted a complaint to the State Water Resources Control Board (State Water Board) alleging that the US Bureau of Reclamation (Reclamation), SEWD, the Army Corps of Engineers (ACOE) and Calaveras County Water District (CCWD) had violated the Public Trust and numerous other state and federal statutes and regulations in failing to protect the fishery resources of the Calaveras River. The State Water Board subsequently dismissed the CSPA complaint without prejudice and suggested a complaint could be refiled if conditions warranted.

On December 2, 2005, CSPA, Watershed Enforcers, San Joaquin Audubon Society and Committee to Save the Mokelumne filed a follow-up “Public Trust, Waste and Unreasonable Use and Method of Diversion Complaint” with the California State Water Resources Control Board (State Water Board) alleging harm to the Calaveras River salmon and fisheries.² We attach a copy of this complaint as Attachment 1 to these comments.

The State Water Board held this complaint in abeyance pending completion of an HCP for the Calaveras River. As far as CSPA is aware, the complaint is still pending. It is fair to say that no one anticipated that the pendency of the complaint would be fourteen years in awaiting an HCP.

II. Overview of the HCP

Chapter 1 of the HCP provides a description of the project area and SEWD’s operations, along with the relationship between SEWD and other relevant entities in the watershed including Reclamation, ACOE and CCWD. Appendix C to the HCP presents a more detailed description of SEWD’s operations.

The HCP proposes a series of conservation measures and avoidance measures. The HCP proposes to require a 20 cfs as a year-round minimum instream flow in the Calaveras River, measured at a compliance point at Shelton Road. The HCP explains that a 25 cfs release from New Hogan Dam will generally be required in order to meet the flow requirement at the compliance point.³ The exception to this requirement is that the minimum instream flow may be reduced to as little as 10 cfs in “critical water storage periods.”⁴

¹ *Oncorhynchus mykiss* is the species name for both rainbow trout and steelhead, Rainbow trout and steelhead have different life histories: rainbow trout spend their entire lives in fresh water, whereas steelhead spawn and have early life stages in fresh water but migrate to salt water to live out their adult life stage. Only the anadromous life history (steelhead) is listed under the ESA in California. These comments use *O. mykiss* to refer to both life history strategies..

² CSPA et al., Public Trust, Waste and Unreasonable Use and Method of Diversion Complaint, December 2, 2005, available at <http://calsport.org/12-2-05Calaveras.pdf>.

³ HCP, p. 90.

⁴ *Id.*, p. 85. “Critical water storage periods” are “defined as periods when conservation storage has fallen below 84,100 AF (equivalent to reservoir storage of 99,100 AF). *Id.*”

The HCP describes a number of interim conservation measures that the HCP proposes to either make permanent or to continue until more protective measures are put in place. These include temporary modifications to structures, sequencing of operations, and adaptive management, notably of flood flows.

The HCP considers requirements for flow releases from storage at New Hogan Reservoir to provide upstream and downstream migration flows for steelhead and salmon. The HCP dismisses such migration flows because “even relatively small volumes of stored water for migration results in negative consequences to storage.”⁵ In addition, the HCP states that “existing water rights do not allow for the provision of artificial migration flows.”⁶

The HCP would require new fish screen and passage facilities at diversion works and dams on the Calaveras River, Mormon Slough and the Stockton Diverting Channel. Notably, the HCP would require new permanent passage and screen facilities at SEWD’s major diversion works at Bellota Weir, funded by the District and to be completed within 5 to 10 years of the effective date of the HCP. The timelines and funding sources for other facilities vary in their certainty and clarity.

We discuss these and other specific aspects of the HCP below.

III. The HCP’s proposed minimum instream flow release from New Hogan Dam during “critical water storage periods” is inadequate.

The HCP proposes a minimum instream flow requirement that would generally be 20 cfs at Shelton Road, River Mile (RM) 29.3, 12.7 miles downstream of New Hogan Dam at RM 42.0. The HCP proposes to reduce the required minimum instream flow to as little as 10 cfs when total storage in New Hogan Reservoir falls below 99,100 AF.

Shelton Road is an appropriate location for a compliance point. It will help assure that the river reaches between Shelton Road and New Hogan Dam will remain adequately watered year-round. It may also be advisable to add a compliance point at Bellota Weir. Future diversions may decrease the amount of water in the reach between Shelton Road and New Hogan Dam, which can offer usable habitat for salmonids in the non-irrigation season.

The minimum instream flow would generally have practical effect only during the non-irrigation season (October 15 through March 15 in dry years and through April 15 in wetter years).⁷ During the irrigation season, irrigation deliveries are almost always greater than the required minimum flow.⁸ The amount of time that the required minimum instream flow would be controlling of the actual flow would further be limited by the fact that municipal and industrial diversions by SEWD at Bellota Weir (RM 24) during this period often exceed 20 cfs.⁹

⁵ *Id.*, p. 149

⁶ *Id.*

⁷ HCP Appendix C, p. 5.

⁸ *Id.* There appears to be a typographical error page 5 of Appendix C, second half of Table C-1, which shows agricultural deliveries as being 75-250 cfs in Below Normal, Dry and Critical years from April 1 *through March 31*. The correct end date for agricultural deliveries should be October 15.

⁹ *Id.*

The HCP provides an example from 1976-77 of how much more water would need to be released to meet a 20 cfs flow than a 10 cfs during the non-irrigation season during a drought.¹⁰ However, use of this extreme drought example overstates the more generally likely impact, because in less severe conditions it is likely that SEWD would still have made some municipal and industrial deliveries above the required instream flow. In addition, it is likely that in such extreme conditions, SEWD would apply for a flow variance, or would have reduced deliveries in previous months, or both.

Appendix E of the HCP shows that habitat availability for all lifestages of *O. mykiss* except for fry increases rapidly as flows increase from 12 cfs.¹¹ Spawning habitat for both *O. mykiss* and for salmon¹² and is likely to be particularly negatively affected by reduction of flow to 10 cfs.

The proposed 99,100 AF storage threshold in the HCP that would allow reduction in the minimum instream flow is extremely conservative, especially considering that the flood reservation for New Hogan Reservoir allows storage of only 152,000 AF on December 1.¹³ As shown in HCP Table 9 for the years 2007-2010, there were years in which New Hogan storage fell below the 99,100 AF threshold in which the additional release of 3600 AF over the course of the non-irrigation season would have had little impact to storage. In addition, the HCP provides no specifically mandated reductions in SEWD deliveries that might be simultaneous to a reduced instream flow.

Any reduction in required minimum flow should be reserved for the most stressed storage conditions, set at a much lower threshold than 99,100 AF of storage. Any such reduction should also be accompanied by a defined reduction in SEWD deliveries.

IV. The HCP inadequately mitigates for the take of steelhead and salmon by failing to require restoration of the Old Calaveras River channel as salmonid rearing habitat, as a downstream salmonid migration corridor, and as a vehicle to maintain year-round flow in the Calaveras River for the benefit of the City of Stockton and its environs.

The HCP describes how SEWD diverts water if available in November through June into the Old Calaveras River stream channel for groundwater recharge.¹⁴ “Flows diverted for groundwater recharge are limited to approximately 15 cfs in order to conserve water by preventing flows in the Old Calaveras River channel from reaching the confluence with the mainstem.”¹⁵ In other words, flows in the Old Calaveras River upstream of the Stockton Diversion Channel are explicitly managed to avoid maintaining connectivity with the San Joaquin River. This operation effectively eliminates any potential function of the Old Calaveras

¹⁰ HCP, p. 87.

¹¹ HCP Appendix E. pp. E-16 through E-19.

¹² Salmon are not covered by the PHABSIM study in Appendix C, but salmon generally need deeper moving water, and thus more flow, to spawn than do *O. mykiss*.

¹³ HCP, p. 91.

¹⁴ *Id.*, p. 49.

¹⁵ *Id.*, p. 50.

River as rearing habitat for juvenile salmonids by eliminating the possibility that it could be a downstream migration corridor. This is despite the fact that the physical habitat of the Old Calaveras River is superior for salmonids to the habitat in Mormon Slough and the Stockton Diversion Channel, which are preferred solely for their irrigation and flood control functions.

The HCP proposes to permanently write off the Old Calaveras River channel as salmonid habitat by permanently blocking salmonid access to it:

As described under section 7.2, a permanent non-entraining structure will be implemented at the upstream end of the Old Calaveras River channel (barrier or decommissioning of the Headworks Facility); therefore, salmonids will no longer be entrained or inadvertently migrate into the Old Calaveras River, making additional structural improvements within this channel unnecessary.¹⁶

Before adopting a final HCP, SEWD and NMFS should evaluate the use of the Old Calaveras River Channel as salmonid (particularly salmon) rearing habitat, as a juvenile salmonid outmigration corridor, and as a means to maintain year-round flow in the Calaveras River for the benefit of the residents of the City of Stockton and its environs.¹⁷

V. The HCP inadequately mitigates for take of steelhead and salmon because it fails to require managed migration flows drawn from storage.

The average annual flow of the Calaveras River is 157,000 acre-feet per year (AFY).¹⁸ Under the HCP, the required annual minimum flow releases would be about 14,380 AFY. However, since irrigation deliveries are much greater than the required minimum from March 15 (dry years) or April 15 (wet years) through October 15, it would be more accurate to say that the amount of water explicitly released to protect aquatic resources is at maximum 7,190 AFY. In addition, all of the minimum flow released from New Hogan Dam is either captured at Bellota Weir or upstream, or seeps from the channel into the ground. SEWD diverts between 5,000 to 10,000 AFY at Bellota Weir for groundwater recharge.¹⁹

In sum, there is a clear sense to which it is fair to say than none of the water in the Calaveras River watershed is explicitly devoted to instream resources. Except for flood releases, SEWD and other diverters take all of the water. Whatever flood releases escape the control of SEWD or others are directed into flood control channels with little habitat value.

The HCP would maintain SEWD's current operating rules in which the Old Calaveras River headgates would remain closed during flood releases from New Hogan Dam, effectively preventing the Old Calaveras River from becoming an upstream migration corridor. As proposed under the HCP, the only thing that would modify the hydrograph downstream of Bellota Weir would be flood releases. An HCP is not necessary to assure those. The HCP's sole

¹⁶ *Id.*, p. 105.

¹⁷ For further discussion on the issue of a living river in the City of Stockton, please see CSPA's companion comments on the Environmental Assessment/Initial Statement for the HCP.

¹⁸ *Id.*, p. 22.

¹⁹ *Id.*, p. 51.

function in assisting salmon and steelhead migration would be to shape flood flows that are going to be released for flood control in any event.

The HCP makes presents several rationales for not requiring storage releases to improve upstream or downstream migration of salmon or steelhead. Some of these are quasi-scientific arguments that such flows are not or may not be effective. For example: “From previous studies, it is unclear whether manipulations of flow (i.e., artificial pulses of flow) independent of other variables would provide a migration cue.”²⁰ In addition, the HCP argues that salmon or steelhead may or may not be ready to migrate out of the system, particularly just before the onset of irrigation season.²¹

These lines of argument make the perfect the enemy of the good. Anadromous fish have limited windows to migrate into or out of the Calaveras River. Upstream of Bellota Weir, there are reliable flows that at minimum keep the stream channel permanently watered. Downstream of Bellota, the channel is effectively ephemeral in the non-irrigation season. Upstream migrating adults need to move past Bellota Weir at RM 24 on any pulses of water that reach the confluence of the Calaveras River and the San Joaquin River. Downstream migrating juveniles need to reach traverse the reach from Bellota to the San Joaquin before the channel is dewatered or before diversion structures block their movement, or both.

The National Marine Fisheries Service (NMFS) itself recognized the need for migration flow pulses in the Calaveras River in its 2014 Central Valley Salmonid Recovery Plan.²² As Calaveras River actions, the Recovery Plan recommends: “Develop and implement longterm [sic] year-round instream flow schedules and water temperature requirements that are protective of all steelhead life stages, including providing flows for upstream and downstream fish passage.”²³

The HCP states: “Using these data, Peterson et al. (publication pending) found that discharge from Cosgrove Creek, a tributary to the Calaveras, appeared to cue juvenile outmigration more so than releases directly from New Hogan Reservoir.”²⁴ This is not surprising, since such relatively high flow events originating in Cosgrove Creek are more frequent than flood releases from New Hogan. Regardless, the observation suggests that the need may not be for “artificial pulses” to provide all of water needed for upstream of downstream migrants to achieve passage. Augmenting natural flow events, such as temporarily high mainstem and tributary inflow, may provide migrants the opportunity to complete passage successfully. Yet this option is not considered in the HCP.

The HCP notes that in recent times (through 2014), salmon have not spawned in the Calaveras except in high water years 2005, 2006 and 2011.²⁵ Yet there are reports of fish

²⁰ *Id.*, p. 153.

²¹ *Id.*

²² National Marine Fisheries Service, West Coast Region, *Recovery Plan for the Evolutionarily Significant Units of Sacramento River Winter-Run Chinook Salmon and Central Valley Spring-Run Chinook Salmon and the Distinct Population Segment of California Central Valley Steelhead*, Sacramento, California July 2014.

²³ *Id.*, p. 331.

²⁴ HCP, p. 5. Cosgrove Creek enters the Calaveras just downstream of New Hogan Dam.

²⁵ HCP, p. 154, fn. 23.

stranded in the Calaveras in 2002-2003, and that the issue of passage gained widespread scrutiny largely in instances where salmon were stranded trying to move upstream.²⁶ Dedicating defined amounts of water to migration pulse flows could improve the frequency with which salmon (and also steelhead) are able to successfully spawn in the Calaveras and could improve the overall survival of both salmon and steelhead juveniles.

The HCP notes both rapid growth in San Joaquin County and a condition in the Calaveras basin of groundwater overdraft. The HCP states that SEWD has increased conjunctive use projects in the watershed and plans more in the future.²⁷ This suggests that SEWD will make additional diversions from the Calaveras River over the next 50 years. Additional diversions would reduce the already diminished opportunities for salmonid migration. However, the HCP proposes no mitigation for such additional diversions.

The HCP states: “Additionally, existing water rights do not allow for the provision of artificial migration flow.”²⁸ The argument is self-serving and legally incorrect. Any water right is conditioned on the protection of public trust resources under the State Water Board’s ongoing authority.²⁹ No water right allows the take of listed species; prohibition of take has become a standard permit condition that is now placed in every water right.

The heart of the HCP’s arguments against releases from storage to assist in salmonid migration revolves around the water cost:

Providing artificial adult pulse flow releases for steelhead would remove a substantial quantity of water from beneficial consumptive use (i.e., 6,237-47,520 AF annually) and in most years would reduce the reservoir storage to below 99,100 AF (Table 19); therefore, it would be significantly detrimental to the District (due to reductions in surface water deliveries and associated increase in groundwater usage in a critically overdrafted basin) ...³⁰

Given the detrimental impacts on beneficial consumptive use by providing an artificial adult pulse flow for steelhead and the lack of practical benefits of providing an artificial adult pulse flow for Chinook salmon, this alternative was dismissed.³¹

Though the quotes directly above deal specifically with upstream migration of adult salmon and steelhead, it is fair to say that the water cost is the overriding concern with “artificial juvenile *O. mykiss* and Chinook migration flows”³² as well. For instance, the HCP says elsewhere: “...in most years managed fish passage flows are not practical...”³³ The HCP states

²⁶ See e.g. news articles referenced at the end of the CSPA complaint, Attachment 1 to these comments.

²⁷ HCP, p. 18.

²⁸ *Id.*, p. 149. One could make the same argument about minimum instream flows, which are equally not contemplated in Reclamation’s water right. It would be equally incorrect.

²⁹ The State Water Board has the authority *and* affirmative duty to consider the public trust when making water allocation decisions, and to preserve and protect public trust resources that are affected by its decisions, so far as consistent with the public interest. (*Nat. Audubon Society v. Super. Ct.* (1983) 33 Cal.3d 419, 426, 446-47).

³⁰ *Id.*, p. 150.

³¹ *Id.*

³² *Id.*

³³ *Id.*, p. 41.

various reasons why pulse flow releases may not successfully move juvenile salmonids out of the system.

Even if conditions are not ideal and many fish may not successfully move into or out of the system on managed pulses, it is certain that their chances for successful migration are better than fish that attempt to migrate when there is no water in the river. Experience on the Mokelumne River over the past 10 years has shown that fish tend to migrate upstream on the declining limb of short flow pulses.³⁴ A successful and effective adaptive management team on the Mokelumne, similar to that proposed in the HCP for the Calaveras, has improved pulse flow strategy over the past decade. Using the monitoring protocols that the Calaveras HCP would establish, it is also reasonable to test various hypotheses about the most effective use of pulses improve the success of salmonid (and particularly salmon) outmigration.

A revised HCP should re-evaluate the benefits of flow releases from storage for upstream and downstream migration of salmonids, and should include such releases. A revised HCP should consider different release values based on hydrology. It should also define hypotheses for the Calaveras River management team to test in order to increase the effectiveness of such releases. In addition, a revised HCP should require flow mitigation for any future additional diversions, since they will further reduce flood control releases and therefore opportunities for salmonid migration in the Calaveras River.

It is not reasonable for an HCP for fisheries to devote a net of zero water to the improvement of fishery resources in a watershed.

VI. The modifications of diversion works to assure upstream and downstream passage of fish under the HCP are positive and long overdue, but aspects of most of these projects, including funding and timelines, are not sufficiently certain.

The HCP reports: “Improvements were completed in 2011 at Budiselich Flashboard Dam and in 2013 at Caprini Low Flow Crossing.”³⁵ In addition, DWR and others completed passage improvements at the Central California Traction Railroad Crossing (RM 1) in 2019.

Bellota Weir blocks upstream passage and can entrain salmonids toward SEWD’s water treatment plant. SEWD has installed two temporary fish ladders at Bellota Weir since 2001 and a temporary fish screen there since 2006. However, the ladders are operational only at limited flow conditions and have limited effectiveness, and the temporary screen does not meet fish agency criteria for fry.³⁶

The HCP promises to upgrade the overall facilities at Bellota Weir, including construction and use of new fish ladders operational at a wide range of flows and a new fish screen that meets NOAA and CDFW criteria for fry. SEWD has already secured a grant for planning and permitting this important project. The HCP affirms: “The proposed improvement

³⁴ See East Bay Municipal Utility District’s annual fisheries reports, available at: <http://www.ebmud.com/recreation/protecting-natural-habitat/fisheries-and-wildlife-division-reports/>.

³⁵ HCP, p. 105.

³⁶ *Id.*, pp. 100-103.

identified for the Bellota Diversion Facility (CH2M Hill 2005; SEWD 2009) is targeted to be completed within the first five years, but will be implemented no later than the first ten years of issuance of the ITP.”³⁷ Regarding funding for the Bellota Weir project, the HCP further states:

[T]he construction timeframe may depend on obtaining matching funds from outside sources such as CALFED, AFRP, NMFS, CDFW, and/or other grant sources. Should funding from these outside sources not materialize, SEWD will work with its urban contractors to develop and implement a funding strategy to complete construction. Since the Calaveras River is identified as a priority stream for salmonids, SEWD anticipates funding will be made available.³⁸

As described previously, the HCP also promises that SEWD will install new headworks at the Old Calaveras River channel. To address CSPA’s concerns with the potential for salmonids to use of this channel, the design of new headworks would likely need modification. As stated, the HCP proposes to complete a “non-entraining headworks” within ten years.³⁹ The funding commitment for this project as presently conceived is similar to that for the Bellota Weir project:

Although SEWD is committed to implementing a non-entraining barrier, the construction timeframe will depend on obtaining matching funds from outside sources such as CALFED, AFRP, NMFS, CDFW, and/or other grant sources. Should funding from these outside sources not materialize, SEWD will work with its urban contractors to develop and implement a funding strategy to complete construction.⁴⁰

In addition to these two major fish passage projects, the HCP promises: “SEWD is committed to implementing the replacement or retrofitting of all Tier 1 structures in Mormon Slough/SDC owned and operated by Stockton East Water District (i.e., five).”⁴¹ These “Tier 1” structures are not clearly identified in the HCP. Also, the HCP states the timing commitment for these projects less definitively: “It is expected that improvements to SEWD-owned Tier 1 structures in Mormon Slough/SDC will be completed within the first ten years of the ITP.”⁴² This does not appear to be an explicit commitment to complete the projects in ten years. Equally, the HCP does not specify the source of funding for replacing or retrofitting these structures. In discussing funding for “Artificial Instream Structures and SEWD Small Instream Dam Operations,” the HCP states: “Once fish passage improvements are identified and prioritized through the AMP process, funding will be obtained using all available revenue raising devices.”⁴³ The HCP does not appear to have a backstop that SEWD will fund these projects in whole or in part absent outside funding. Considering that it took a decade to fund and complete two major fish passage projects on the Calaveras River (Budiselich and Caprini), a more certain funding source for the numerous remaining fish passage projects at SEWD facilities is in order.

³⁷ *Id.*, p. 100.

³⁸ *Id.*, p. 162.

³⁹ *Id.*, p. 97.

⁴⁰ *Id.*

⁴¹ *Id.*, p. 105.

⁴² *Id.*, p. 146.

⁴³ *Id.*, p. 162.

The HCP does not provide timelines or define funding sources for fish passage improvements at other diversion facilities that restrict or block fish passage.

For other SEWD diversions, the HCP proposes an evaluation and decision process through an adaptive management committee (the Calaveras River Technical Review Group, or CRTRG).⁴⁴ The HCP contains a commitment from SEWD to fund its own participation in this committee, as well as the fisheries monitoring program and maintenance of the District's instream structures, but the HCP contains no funding for fish passage improvements to additional SEWD facilities that the committee decides to pursue.⁴⁵

For "privately owned" diversions, "no funding commitments are made."⁴⁶ The HCP proposes that the CRTRG will help to identify priorities for remediation and that SEWD will support permitting, design, and the like.⁴⁷ Under the HCP, SEWD and the CRTRG will not monitor entrainment at any privately owned diversions, screened or unscreened.⁴⁸

The HCP proposes no fish passage improvements (including screens) in the Old Calaveras River channel. As discussed above, writing off this 19-mile-long channel may not be the best use of Calaveras River resources.

The HCP estimates that there will be 194 unscreened diversions in the lower Calaveras River watershed not covered by the HCP, with no plans under the HCP to screen them.⁴⁹

In sum, fish passage improvements in the lower Calaveras River watershed are long overdue. The proposed new facilities at Bellota Weir are likely the most important single element of this HCP. The proposed new headworks for the Old Calaveras River channel may eliminate a better use of this channel; a revised HCP should re-evaluate both the headworks and the future of the channel. A revised HCP should specify the "Tier 1" facilities for which the HCP proposes improve fish passage, and should include more definitive commitments and timelines to fund and implement these improvements.

A revised HCP should also consider a funding stream to define and implement additional fish passage improvements at SEWD-owned or privately owned facilities as the case may be, based on prioritization by adaptive management.

VII. Conclusion

SEWD and NMFS should revise the HCP consistent with these comments. SEWD and NMFS should use an Environmental Impact Statement/Environmental Impact Report to evaluate

⁴⁴ *Id.*, p. 141.

⁴⁵ *Id.*, pp. 162-163.

⁴⁶ *Id.*, p. 163.

⁴⁷ *Id.*, p. 112.

⁴⁸ *Id.*, p. 114.

⁴⁹ *Id.*

options these comments suggest.⁵⁰ Among the specific measures that SEWD and NMFS should evaluate in the revised HCP are the following.

The revised HCP should select a lower storage threshold at which the required minimum instream release from New Hogan Dam would drop from 20 cfs to 10 cfs, reserving a lower minimum for the most dire circumstances.

The revised HCP should evaluate use of the Old Calaveras River Channel to provide juvenile rearing habitat for salmonids and to provide a year-round instream flow for the Calaveras River to its confluence with the San Joaquin River.

The revised HCP should re-evaluate options for providing migration flows from water stored in New Hogan Reservoir. Options should include a range of flows and separately evaluate migration flows for salmon and steelhead.

The revised HCP should describe the specific facilities that SEWD commits to remediate to improve fish passage, and should describe the timelines and funding sources. The revised HCP should make a funding commitment for passage improvements at other SEWD diversion works and at private diversion works.

Thank you for the opportunity to comment on the Habitat Conservation Plan for the Calaveras River.

Respectfully submitted,



Chris Shutes, Water Rights Advocate
California Sportfishing Protection Alliance
1608 Francisco Street
Berkeley, CA 94703
510.421.2405
blancapaloma@msn.com



Bill Jennings, Executive Director
California Sportfishing Protection Alliance
3536 Rainier Avenue
Stockton, CA 95204
209.464.5067
deltakeep@me.com

⁵⁰ For further discussion on NEPA and CEQA, please see CSPA's companion comments on the Environmental Assessment/Initial Statement for the HCP.

Attachment 1

CSPA et al.
Public Trust, Waste and
Unreasonable Use and Method of Diversion
Complaint
Regarding the Calaveras River

December 2, 2005

William Jennings, Chairman and Executive Director
California Sportfishing Protection Alliance
Watershed Enforcers
3536 Rainier Avenue
Stockton, California 95204

Michael Jackson
Law Offices of Michael Jackson
429 West Main Street
Quincy, California 95971
530-283-1007

Michael R. Lozeau
Law Offices of Michael R. Lozeau
1516 Oak Street, Suite 216
Alameda, California 94501
510-749-9102

Jim Crenshaw, President
California Sportfishing Protection Alliance
1248 E. Oak Ave., No. D
Woodland, CA 95776
530-661-0997

For Petitioners California Sportfishing Protection Alliance, Watershed Enforcers, San Joaquin Audubon Society and Committee to Save the Mokelumne

BEFORE THE STATE WATER RESOURCES CONTROL BOARD

Petitioners,)	
California Sportfishing Protection Alliance, Watershed Enforcers, San Joaquin Audubon Society and the Committee to Save the Mokelumne ("CSPA"))	PUBLIC TRUST, WASTE AND UNREASONABLE USE AND METHOD OF DIVERSION COMPLAINT
)	
Respondents,)	Calaveras River, Tributary to San Joaquin River thence Bay Delta Estuary thence Pacific Ocean
U.S. Bureau of Reclamation, WR Application 18812)	
Stockton East Water District, WR Application 06522)	Calaveras County, California
U.S. Department of the Army, U.S. Army Corps of Engineers, Owner of New Hogan Dam)	
Calaveras County Water District, WR Application 1179A)	

In accordance with the provisions of the California Code of Regulation, Title 23, the California Water Code, and other applicable provisions, the California Sportfishing

Protection Alliance and its Watershed Enforcers project, Committee to Save the Mokelumne and San Joaquin Audubon (hereinafter “CSPA”) hereby complain against the U.S. Bureau of Reclamation, Stockton East Water District, Calaveras County Water District and the U.S. Department of the Army as follows:

1. The U.S. Bureau of Reclamation (hereinafter “USBR”) has a permitted right under WR Application 18812 to store and divert water from the Calaveras River Watershed. Under WR Application 18812, the storage right is for 325,000 acre-feet of water with a storage season from 11/5 to 5/01 for domestic, irrigation and industrial purposes; and also a direct diversion right of 200 cfs with a direct diversion season from 11/5 to 5/01 for domestic, irrigation and industrial purposes.
2. The Stockton East Water District (hereinafter “Stockton East”) has a permitted right under WR Application 06522 to store and divert water from the Calaveras River Watershed. Under WR Application 06522, the storage right is for 11,500 acre-feet of water with a storage season from 11/1 to 6/01 for domestic and irrigation purposes and a direct diversion right of 13.75 cfs with a direct diversion season from 1/01 to 6/15 for domestic and irrigation purposes.
3. The U.S. Department of the Army (hereinafter “COE”) is the owner of New Hogan Dam. New Hogan Dam and Reservoir is located on the Calaveras River and is managed and operated under right permits issued by the State Water Resources Control Board (hereinafter “SWRCB”) to the USBR, Stockton East and CCWD. New Hogan Dam was constructed in 1964 by the COE. New Hogan Reservoir has a capacity of 323,715 ace-feet with no dead storage.
4. The Calaveras County Water District (hereinafter “CCWD”) has a permitted right under WR Application 1179A to store and divert water from the Calaveras River Watershed. Under WR Application 1179A, the storage right is for 11,500 acre-feet of water with a storage season from 11/01 to 5/01 for domestic, irrigation and industrial purposes and a direct diversion right of 30 cfs with a direct diversion season from 11/01 to 5/01 for domestic, irrigation and industrial purposes.
5. Established in 1983, the CSPA is a recognized 501(c)(3) non-profit organization whose mission is to protect, preserve and enhance the fisheries and associated aquatic and riparian ecosystems of California’s waterways, including the Calaveras River. This mission is implemented through active participation in water rights and water quality processes, educating and organizing the fishing community, restoration efforts and vigorous enforcement of environmental laws enacted to protect fisheries, habitat and water quality. Watershed Enforcers is a project of CSPA. Members of CSPA/Watershed Enforcers reside along the Calaveras River, enjoy the

benefits of the river's fisheries and have been injured by the actions of the respondents.

6. Established in 1991, the Committee to Save the Mokelumne (hereinafter "CSM") is a 501(c)(3) non-profit organization whose mission is to protect the aquatic and riparian communities of the Mokelumne, Consumes and Calaveras Rivers. CSM has been a party to numerous formal proceedings on behalf of the Mokelumne and Calaveras Rivers. Members of the CSM reside along the Calaveras River, enjoy the river's fisheries and have been injured by the actions of the respondents.
7. Established in the late 1940s, San Joaquin Audubon is a 501(c)(3) non-profit organization dedicated to the appreciation, protection, education and scientific study of birds and wildlife, including fisheries. San Joaquin Audubon has been a party to many actions protecting natural resources. Members of San Joaquin Audubon reside along the Calaveras River, enjoy the river's wildlife and fisheries and have been injured by the actions of the respondents.
8. On 22 March 2000, CSPA submitted a complaint to the State Water Resources Control Board (hereinafter "SRWCB") alleging that the USBR, Stockton East, COE and CCWD had violated the Public Trust and numerous other state and federal statutes and regulations in failing to protect the fishery resources of the Calaveras River. The SWRCB subsequently dismissed the CSPA complaint without prejudice and suggested a complaint could be refiled if conditions warranted. Since that time, degradation of the fishery resources of the Calaveras River has continued unabated.
9. Given the SWRCB's dismissal of CSPA's previous complaint and the failure of the resource agencies to affirmatively submit information regarding fishery impacts on the Calaveras River, CSPA requests that, should the SWRCB not accept and order CSPA's proposed relief described below, the SWRCB schedule an evidentiary hearing following preparation of the requested investigative report.

Statement of Facts and Reasons for the Public Trust, Waste and Unreasonable Use and Method of Diversion Complaint by the CSPA.

10. The Calaveras River watershed sustains fall-run Chinook salmon (*Oncorhynchus tshawytscha*) and their habitat. The management and use of water by the USBR, Stockton East and CCWD under permitted water rights issued by the SWRCB have adversely affected the fall-run Chinook salmon and their habitat.
11. The Calaveras River watershed sustains a remnant population of steelhead trout (*Oncorhynchus mykiss*) and their habitat (Consultation with California Department of Fish and Game (Hereinafter "DFG") and U.S. National Marine

Fisheries Services (hereinafter “NMFS”). In 1998, the Central Valley steelhead Evolutionarily Significant Unit Was listed as “threatened” by NMFS pursuant to the provisions of the federal Endangered Species (ESA). In addition, the Calaveras River and Mormon Slough were listed as critical habitat for Central Valley steelhead trout in February 2000 and September 2005.

Prior to the Construction of New Hogan Dam, some 500 steelhead trout ascended the river to spawn. COE 1981. The management and use of water by the USBR, Stockton East and CCWD under the permitted water rights issued by the SWRCB have adversely affected Calaveras River steelhead trout and their habitat.

12. The Calaveras River watershed sustains a remnant population of spring-run Chinook salmon and their habitat. Prior to the Construction of New Hogan Dam, some 500 spring-run Chinook salmon ascended the river to spawn. COE 1981. The Central Valley spring-run Chinook salmon species have been listed as threatened by the NMFS pursuant to the federal ESA. The management and use of water by the USBR, Stockton East and CCWD under the permitted water rights issued by the SWRCB have adversely affected Calaveras River spring-run Chinook salmon and their habitat.
13. The Calaveras River directly below New Hogan Dam sustains a population of resident rainbow trout. The management and use of water by the USBR, Stockton East and CCWD under the permitted water rights issued by the SWRCB have adversely affected Calaveras River resident rainbow trout and their habitat.
14. The Calaveras River watershed historically sustained a population of winter-run Chinook salmon and their habitat. Prior to the Construction of New Hogan Dam, an estimated 2,000 winter-run Chinook salmon ascended the river to spawn. COE 1981. Following construction of the dam, runs estimated at 1,000 winter-run Chinook salmon were observed in the river in 1972 and 1976. DFG 1993. Winter-run Chinook salmon have been listed as endangered by the NMFS, pursuant to the federal ESA. Unfortunately, the USBR, Stockton East and CCWD have extirpated the winter-run Chinook salmon species from the Calaveras River sometime between 1988 and 1992 because of their storage, diversion and use of water.
15. The Calaveras River is a tributary to the San Joaquin River. Dams block fish migration to the headwaters of the San Joaquin River and all of its principle tributaries. Consequently, natural production of anadromous fish is greatly reduced from historic levels. However, natural production will be enhanced if adequate temperatures and minimum instream flows current being sought are achieved.

16. The flow regime of the Calaveras River has been fundamentally altered by the construction of Hogan Dam and subsequent construction of New Hogan Dam. Historically, the river's hydrology was characterized by highly variable flows during winter and rapid attenuation of flows in the summer. Under the present hydrologic regime, the magnitude of winter flows has been significantly reduced while the magnitude and consistency of summer flows has dramatically increased.
17. Populations of anadromous fish have dropped dramatically in recent years, due to insufficient stream flows during critical times of the year, impairment of migration due to dams, and unscreened agriculture and municipal diversions. COE 1981 & 1989, USFWS 1989.
18. There are no mandatory minimum daily flow requirements from New Hogan Dam to protect the anadromous and resident fisheries of the Calaveras River below the dam. The SWRCB failed to order the USBR, Stockton East and CCWD to maintain mandatory daily flows from New Hogan Dam to the river's confluence with the San Joaquin River to keep resident and anadromous fisheries in good condition.
19. Stockton East and CCWD control all releases of water stored in New Hogan, with the exception of releases for flood control purposes, water in the minimum pool and prior riparian entitlements. COE Contract No. 14-06-200-5057A. Stockton East has rights to 56.5% of project yield plus 12,650 acre feet, and CCWD has rights to 43.5% of project yield plus 350 acre feet. COE 1981.
20. United States Geological Survey (hereinafter "USGS") water supply records for the USGS station 11308900 below New Hogan Dam show no flows many days in 1961-1965, and 1971 below New Hogan Dam in violation California Fish and Game Code Section 5937. USGS 1978.
21. Stockton East manages and operates the Bellota Weir and Diversion. The 15 foot high irrigation dam diverts water from the main channel of the Calaveras River into Mormon Slough for flood control and irrigation purposes, with most of the Calaveras River water flowing into Mormon Slough at Bellota before joining the Stockton Diversion Canal.

There are no minimum mandatory daily instream flow requirements from the Bellota Weir to keep in the downstream fisheries and their habitat in good condition. The timing and magnitude of stream flows below the Weir are not sufficient to allow adult Chinook salmon and steelhead to migrate upstream into the high quality spawning and rearing habitat between Bellota and New Hogan Dam. USFWS 1993. Following the irrigation season, low fall flows below Bellota Weir, which frequently are set to zero by Stockton East, limit upstream migration of adult salmonids. Stillwater Sciences, 2004.

Bellota Weir has been a passage obstacle for more than thirty years. In 1972, DFG, with the cooperation of local organizations, organized a fish rescue operation that transported some 250 salmon trapped below the Bellota Weir to a point five miles upstream. Another rescue operation transporting 405 salmon was conducted in 1976 when low water conditions prevented upstream migration. COE 1981. Several hundred Chinook salmon were observed blocked by the Bellota Weir during the fall of 1995. DFG unpublished data, as cited in Yoshiyama et al. 1996.

22. Stockton East operates fish ladders at the Bellota Weir that are inadequate and impassable at high (>60 cfs) and low flows (<10 cfs). Between October 2000 and October 2005, flows over the Bellota Weir averaged less than 10 cfs during critical migration periods on a minimum of 506 days. There were an additional 164 days during that period when it is believed that less than 10 cfs flowed through the fish ladder. CSPA 2005. At the other extreme, flows approaching 450 cfs between 1 November and 22 November 2005 trapped hundreds of Chinook salmon in the pool below the Bellota Weir. The high flows obscured the ladders and fish were unable to ascend the weir to upriver spawning areas. Stockton Record article titled "Salmon struggle with uphill battle," 18 November 2005. Hundreds of Chinook salmon carcasses were identified below Bellota Weir. Presentation by Fisheries Foundation at Calaveras River Fish Group meeting, 1 December 2005.
23. Rapid flow fluctuations caused by Stockton East's management of water releases frequently strand fish below the Bellota Weir and other downstream fish passage barriers. These barriers include low water crossings, rip rap barriers, concrete dams, earthen dams and flash board dams. For example, on 19 & 20 April 2005, the Fishery Foundation stranding survey documented hundreds of fish, including Chinook salmon and Steelhead trout as stranded in the reach below Bellota Weir following a dramatic reduction in stream flow. Fishery Foundation 2005. Biologists from U.S. Fish and Wildlife Service (hereinafter "USFWS"), and the Fishery Foundation have also documented stranding of salmon and steelhead attributable to a lack of sustained flows in 2002, 2003 and 2004. USFWS 2002-03, Fishery Foundation 2005.
24. The aquatic invertebrate communities in the Calaveras River upstream of Bellota exhibit reasonably good mass and diversity and include stoneflies and other species less tolerant of low flows and poor water quality conditions. However, the invertebrate communities below Bellota exhibit low mass and diversity and are largely comprised of species tolerant of poor water quality and low flow conditions. Strange T., Strange Aquatic Resources, Calaveras River Rapid Bioassessment.
25. Examination of spawning habitat below New Hogan Dam indicates the absence of adequate flushing flows sufficient to mobilize the channel bed

gravels and eliminate excessive infiltration of sand and fines that prevent successful incubation of salmonids eggs and subsequent emergence of fry. Stillwater Sciences 2000.

26. Numerous diversions of water from the Calaveras River below New Hogan Dam are not screened to prevent entrainment and harm to all life stages of anadromous fish. At least twenty-eight unscreened diversions exist between New Hogan Dam and Bellota Weir. At least 262 unscreened diversions exist between Bellota Weir and the San Joaquin River, a number of which are associated with seasonal flashboard dams and other barriers to fish passage. Stockton East's water diversion point at the Bellota Weir is the largest diversion on the Calaveras and has not been screened for decades. USFWS, DFG and NMFS have all identified unscreened diversions as harmful to Calaveras River Fish.
27. Hypolimnetic releases of water from New Hogan Dam and increased summer flows have reduced temperatures in the Calaveras River from historical levels. The inactive minimum pool of 15,000 acre-feet in New Hogan Reservoir is inadequate to ensure protective temperatures for spawning and incubation in many years. USFWS 1993.
28. The Calaveras River is listed on the California 303(d) List of impaired waterbodies because of pathogens, pesticides and low dissolved oxygen. While the principle source of impairing pollutants is likely the Stockton urban area, excessive diversion of dilution flows by Stockton East exacerbates downstream water quality.
29. Stockton East has refused to enter into formal consultation with the NMFS for the purpose of securing a "take" permit pursuant to the ESA. Informal discussion has occurred and Stockton East has been preparing a Habitat Conservation Plan (hereinafter "HCP") over the last four years. However, representatives from DFG, USFWS and NMFS have expressed frustration over the slow pace of HCP development. Calaveras Fish Group Meeting Notes, 2002-2005. None of the elements of the HCP have been circulated for public inspection and no Biological Opinion or NEPA/CEQA document is in preparation.
30. Restoration of California's anadromous fish populations is mandated by the Salmon, Steelhead, and Anadromous Fisheries Program Act of 1988 (SB 2261) which states that it is the policy of the State to significantly increase the natural production of salmon and steelhead by the end of the last century.
31. Pursuant to the Salmon, Steelhead, and Anadromous Fisheries Program Act of 1988, the DFG issued an action plan for restoring Central Valley Streams in 1993. It identified low instream flows, Bellota Weir and other instream irrigations dams and unscreened diversions as responsible for the decline of

the Calaveras River salmon fishery. Based upon a preliminary instream flow study, the DFG recommended adequate fish passage facilities be constructed, the screening of diversions, removal of temporary flashboard dams during migration periods and adequate instream flows for spawning, rearing and migration. DFG 1993.

32. The Central Valley Project Improvement Act (hereinafter “CVPIA”) requires the development and implementation of a program to ensure that, by the year 2002, natural production of anadromous fish in the Central Valley will be sustainable at levels not less than twice the average levels attained between 1967-1991. This requirement is implemented through the Anadromous Fish Restoration Program. In January 2001, the Final Restoration Plan for the Anadromous Fish Restoration Program was adopted. The plan identified inadequate instream flow, unscreened diversions, lack of fish passage facilities and temperature as obstacles to the restoration of anadromous fisheries on the Calaveras River. Supplemental instream flows was listed as a “high priority.” USFWS 2001.
33. The USFWS, as part of a Stanislaus River Basin Calaveras River Conjunctive Use Water Program Study, conducted an evaluation based upon preliminary instream flow studies and a study of physical habitat for different life stages of salmon. This evaluation was submitted to the USBR in January 1993 as part of the consideration of Stockton East’s application to divert water from the Stanislaus River. It was proposed that the proposed diversions from the Stanislaus River be used conjunctively to benefit both agriculture and the Calaveras fisheries. The USFWS evaluation included flow schedules, minimum pool requirements for New Hogan Dam and other recommendations for the restoration of the winter-run Chinook salmon fishery. USFWS 1993.

Although Stockton East subsequently secured additional water from the Stanislaus River, they have never used that water to benefit Calaveras River fisheries and, instead, have repeatedly sought to sell that newly acquired water to out-of-basin interests. Indeed, in October 2005, Stockton East announced that it had sold 8,000 acre-feet of water it receives from the USBR to Semitropic Water Storage District in Kern County. Instead of bringing the transferred water through Goodwin Tunnel to benefit the Calaveras River, Stockton East will send it down the Stanislaus River to the Delta where it will be exported to Kern County. Stockton Record 22 October 2005.

34. CSPA has sent Stockton East a 60-day notice letter of intent to sue, pursuant to Section 11(g)(2)(A) of the federal Endangered Species Act (hereinafter ESA), 16 U.S.C. § 1540(g)(2)(A) for unlawful “taking” of Chinook salmon and Steelhead trout along the Calaveras River channel in violation of the Act. The notice letter alleges that Stockton East has illegally taken listed species by operating impassible barriers to migration, failing to install fish screens at

points of diversion and stranding fish below barriers through their management of water releases. CSPA 2005.

35. CSPA has filed a 60-day notice letter of intent to sue, pursuant to Section 505(b) of the federal Water Pollution Control Act (hereinafter “CWA”) 33 U.S.C. § 1365(b) against Stockton East for discharging pollutants without a permit. Stockton East has violated and continues to violate Section 301(a) of the CWA by discharging deleterious materials into the Calaveras River and Mormon Slough by the regular flushing of its intake and other pipes. The discharged material includes large amounts of sediment and debris and is likely to adversely affect habitat crucial to fish in downstream channels, especially in light of inadequate flushing flows. CSPA 2005.
36. CSPA believes that the operation, management, diversion and use of water from New Hogan Dam and Reservoir and Bellota Weir is in violation of California Fish and Game Code Section 5937 because USBR, Stockton East and CCWD have failed to keep the anadromous fisheries in good condition at all times.
37. CSPA believes that the operation, management, diversion and use of Calaveras River water by the USBR, Stockton East and CCWD is an unreasonable method of diversion and a waste and unreasonable use of the state’s water in violation of Article X, Section 2 of the Constitution of the State of California because no mandatory daily flow requirements from New Hogan Dam and Bellota Weir were ordered by the SWRCB to sustain and keep in condition at all times the public trust anadromous fisheries of the Calaveras River.
38. The USBR, Stockton East and CCWD have a duty and responsibility to comply with California Fish and Game Code Section 5937 and to provide adequate daily flows and other protective measures to sustain and keep in good condition at all times fall-run Chinook salmon, winter-run Chinook salmon, spring-run Chinook salmon, Steelhead trout and resident rainbow trout species and their habitat below New Hogan Dam and downstream diversions in the Calaveras River to the San Joaquin River.
39. The USFWS in cooperation with the Secretary of the Interior, and assisted by the Anadromous Fish Restoration Program Core Group under the authority of the CVPIA, made the following recommendations for the Calaveras River:
 - A. Supplement flows with water acquired from willing sellers consistent with applicable guidelines or negotiated agreements to improve conditions for all life history stages of Chinook salmon;
 - B. Provide flows of suitable water temperatures for all salmonids life stages;
 - C. Facilitate passage of adult and juvenile salmonids at existing diversion dams;

- D. Screen all diversions to protect all life history stages of anadromous fish.
- E. Evaluate instream flow, water temperature and fish habitat use in the Calaveras River to develop a real-time management program so that reservoir operations can maintain suitable habitat when fish are present;
- F. Monitor sport fishing and evaluate the need for regulations to protect salmonids.

Relief Requested by the CSPA

- 40. The SWRCB should conduct an investigation of this complaint and take action as shown below.
 - A. The SWRCB should re-visit and modify the water right permits of the USBR, Stockton East and CCWD and the Board should order terms and conditions that keep in good condition and protect all life stages of the anadromous fisheries and resident rainbow trout and their habitat in the Calaveras River;
 - B. The SWRCB should order mandatory daily flow requirements for New Hogan Dam which keeps in good condition at all times all life stages of the anadromous fisheries and resident rainbow trout and their habitat below New Hogan Dam to the San Joaquin River;
 - C. The SWRCB should order necessary pulse flows from New Hogan Dam which will attract and enable adult anadromous fish to escape into the Calaveras River as well as enabling juvenile anadromous fish to escape from the Calaveras River to the San Joaquin River;
 - D. The SWRCB should order daily instream flow requirements for the Bellota Weir which sustains all life stages of the anadromous fisheries below the Bellota Weir;
 - E. The SWRCB should order that functional fish passage facilities be provided to enable up-migrants to reach their natal spawning grounds and out-migrants to reach the sea.
 - F. The SWRCB should order the screening of all diversions on the Calaveras River to prevent the entrainment of all life stages of anadromous fish.
 - G. The SWRCB should require that the USBR, Stockton East and CCWD to fully comply with the provisions of the federal Water Pollution Control Act, the Porter-Cologne Water Quality Control Act and the Central Valley Basin Plan.
 - H. The SWRCB should order mandatory minimum pool requirements in New Hogan Reservoir and mandatory water temperature requirements for releases of water from New Hogan Dam and the Bellota Weir sufficient to protect fish and macroinvertebrate species;
 - I. In conducting the requested investigative report related to this complaint, the SWRCB should obtain recommendations from the USFWS, DFG, and NMFS regarding the protective measures necessary to protect anadromous and resident coldwater fisheries on the Calaveras River.

41. CSPA requests the SWRCB to have the USBR, Stockton East, CCWD and the COE to answer this complaint in a timely manner.
42. As further information becomes available, CSPA requests the opportunity to amend this complaint.
43. Following the SWRCB's investigation of this complaint, CSPA requests that an evidentiary hearing be scheduled.
44. All letters and actions from the SWRCB, USBR, Stockton East, CCWD and COE regarding this complaint should be forwarded by first class mail to Bill Jennings, Michael Jackson, Michael R. Lozeau and Jim Crenshaw at their addresses on the first page of this complaint.
45. Copies of the CSPA public trust, waste and unreasonable use and method of diversion complaint have been served on the USBR, Stockton East, CCWD and COE by first class mail.

Respectfully Submitted

Bill Jennings, Chairman and Executive Director
California Sportfishing Protection Alliance
Watershed Enforcers
Committee to Save the Mokelumne

Waldo Holt, Conservation Chair
San Joaquin Audubon Society

Dated: 2 December 2005

Exhibits

1. CSPA, 2005, Notice of Violations and Intent to File Suit Under the Federal Endangered Species Act. Includes:
 - a. Exhibit A, flows less than 10 cfs at Bellota Weir October to April, 2000 through October 2005.
 - b. Exhibit B, flows less than 20 cfs at Bellota Weir October to April, 2000 through October 2005.
 - c. Exhibit C, Record of dead Chinook salmon and Steelhead trout in the reach below Bellota Weir, 2001-2005.
2. Fishery Foundation of California, 2005, Mormon Slough/Diverting Canal Drawdown Stranding Survey.
3. Fishery Foundation, 2003, Draft Plan of Actions to Restore Salmon and Steelhead Populations in the Lower Calaveras River, prepared for the USFWS.
4. USBR, 1999, Water Acquisition Program; Preliminary Investigation; Calaveras County Water District, prepared by Carissa Dunn.
5. USFWS, 2002 & 2003, photographs of stranded fish in Stockton Diverting Canal, below Bellota Weir and Mormon Slough, photos taken by Gonzalo Castillo.

References

1. COE, 1981, Reconnaissance Report, New Hogan Fishery Investigation, California.
2. COE, 1979, Transcript of Public Meeting New Hogan Fishery Investigation Calaveras River, California, Held by the State of California Department of Fish and Game in Stockton, California, 28 March 1979.
3. Calaveras River Fish Group Meeting Notes: 21 Aug. 2002; 21 Jan. 2003; 21 May 2003; 20 Oct. 2003; 11 Dec. 2003; 28 Jan. 2004; 9 Mar, 2004; 27 April 2004; 3 Jun. 2004; 14 Sep. 2004; 4 Nov. 2004; 6 Jan. 2005; 10 Mar. 2005; 18 May 2005; 13 July 2005, 28 Sept. 2005.
4. DFG, 1993, Restoring Central Valley Streams: A Plan for Action.
5. DFG, 1990, Supplemental Water for Fish and Wildlife (a review of supplemental water requirements, potential supplies from water marketing agreements and related costs. Prepared in response to the request of the California Legislature in the 1989 Budget Act).
6. DFG, 1996, Steelhead Restoration and Management Plan for California.
7. Fishery Foundation, 2005, Bellota Fish Ladder Evaluation.
8. S.P. Cramer & Associates, Inc., Memorandum, Recovery of a Dead *Oncorhynchus mykiss* at the Bellota Weir.
9. SWRCB, 1987, List of Current Water Right Holders and New Applicants Within the San Francisco Bay/Sacramento-San Joaquin Delta Hydrologic Basin; Volume 1.
10. Stillwater Sciences, 2000, Technical Memorandum from Vick J. & Pedersen D., of Stillwater Ecosystem, Watershed & Riverine Sciences to Nieuwenhuysen E., USFWS - AFRP, 2 February 2000.
11. Stillwater Sciences, 2004. Lower Calaveras River Chinook Salmon and Steelhead Limiting Factors Analysis, First Year Report (Revised).
12. Stockton Record, Newspaper Articles: a) Rare Even for Calaveras, 4 November 1995, Jim Nickles, b) Salmon get a little help from human friend, 7 November 1995, Jim Nickles, c) Fishing for salmon, steelhead may be banned, 22 November 1995, Jim Nickles, d) Fishing restricted on lower Calaveras, Jim Nickles, 23 November 1995, e) Fish ladder set up, Biologist worried about lack of water, Jim Nickles, 4 November 1999, f) A dry run?, Installing a fish ladder on Calaveras River won't help if there isn't any water,

Jim Nickles, 7 October 1999, g) Salmon making run at Calaveras, Jim Nickles, 17 October 1998 h) Steelhead debate extended, I) Healthier salmon count has ripple effect in Valley, j) Go fish! New ladder helps salmon make it, Jim Nickles, 3 November 1998 k) Salmon call Calaveras River home again, Jim Nickles, 4 March 1996, l) The forgotten river, m) City to tap into Stanislaus River, n) Someone spinning a fish tale? o) Fish tales spawn debate over Calaveras River, Jim Nickles, 25 April 1999, p) Angling over water, Record Editorial, 24 March 2000, q) The Forgotten River, Record Editorial, 29 April 1999 r) Water Resource goes untapped, letter to editor, 24 May 1999, s) New Hogan storage requested, Francis P. Garland, t) Water plan concerns Stockton East district, Jim Nickles, 17 December 1999, u) Rules threaten S.J. water supply, Plan to protect fish species could crush county farmers, Jim Nickles, 17 March 2000, v) Calaveras board delays New Hogan decision, Francis P. Garland, 21 March 2000, w) Water supply depends on trout upkeep, Jim Nickles, 25 March 2000, x) Reservoir waters released, Flood-control measure takes S.J. water leaders by surprise, Jim Nickles, 16 November 2000, y) An unknown river, Calaveras flows from beautiful to trash-strewn, Audrey Cooper, 8 August 2004, and Waterway grabs biologist' attention, Audrey Cooper, 8 August 2004, z) Stockton East looking south; Kern County water bank to get Melones overflow, Alex Breitler, 22 October, aa) 2005 Salmon struggle with uphill battle, Warren Lutz, 18 November 2005.

Fish Sniffer Article: Calaveras King Salmon Die Before Spawning Because of CALFED's Inaction, Dan Bacher, 3 January 2003.

Calaveras Enterprise Article: Calaveras River teeming with salmon, Craig Koscho, 7 November 1995.

13. USFWS, 1993, Central Valley Project Improvement Act: plan of action for the Central Valley anadromous fish restoration program. Draft Report. USGWS, Sacramento, California.
14. USFWS, 1993, Stanislaus River Basin Calaveras River Conjunctive Use Water Program Study: A Preliminary Evaluation of Fish and Wildlife Impacts with Emphasis on Water Needs of the Calaveras River.
15. USFWS, 1997, Revised Draft Restoration Plan for the Anadromous Fish Restoration Program: A Plan to Increase Natural Production of Anadromous Fish in the Central Valley of California.
16. USFWS, 2001, Final Restoration Plan for the Anadromous Fish Restoration Program.
17. USGS, 1978, Water Resources Data for California, Volume 3, Southern Central Valley Basins and the Great Basin from Walker River to Truckee River, USGS Survey Water-data Report CA-78-3, Water Year 1978, P 209.

Certificate of Service
By First Class Mail

Ms. Celeste Cantu, Executive Director
State Water Resources Control Board
1001 "I" Street
P.O. Box 100
Sacramento, CA 95814

Mr. Harry Schueller, Chief
Division of Water Rights
State Water Resources Control Board
1001 "I" Street
P.O. Box 2000
Sacramento, CA 95814

Mr. Charles Rich, Chief
Complaint Unit
State Water Resources Control Board
1001 "I" Street
P.O. Box 2000
Sacramento, CA 95814

Mr. Mike Aceituno, Sacramento Area Manager
U.S. National Marine Fisheries Service
650 Capitol Mall, Suite 8-300
Sacramento, CA 95814

Mr. Gary Miller, Regional Manager
Department of Fish and Game
1701 Nimbus Road, Site A
Rancho Cordova, CA 95670

Mr. Wayne White, State Supervisor
U.S. Fish and Wildlife Service
3310 El Camino Avenue, Suite 130
Sacramento, CA 95821-6240

Mr. Jim Crenshaw, President
California Sportfishing Protection Alliance
1248 East Oak Avenue, Suite D
Woodland, CA 95695

Mr. Kirk Rogers, Regional Director
U.S. Bureau of Reclamation
2800 Cottage Way

Sacramento, CA 95825

Mr. Kevin Kauffman, General Manager
Stockton East Water District
P.O. Box 5157
Stockton, CA 95205

Calaveras County Water District
P.O. Box 846
San Andreas, CA 95249

U.S. Army Corps of Engineers
c/o District Engineer
Sacramento, CA 95814-2922