



## California Sportfishing Protection Alliance

*"An Advocate for Fisheries, Habitat and Water Quality"*

Chris Shutes, Water Rights Advocate

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April 9, 2014

Julianne Van Leeuwen, Clerk of the Board  
El Dorado Water and Power Authority  
4110 Business Drive, Suite B  
Shingle Springs, CA 95682  
[julianne.vanleeuwen@edcgov.us](mailto:julianne.vanleeuwen@edcgov.us)  
via E-mail

Re: CSPA Comments on Notice of Preparation of a Draft Environmental Impact Report for the  
"El Dorado Water Reliability Project"

Dear Ms. Leeuwen:

The California Sportfishing Protection Alliance (CSPA) respectfully submits these comments on the Notice of Preparation for a DEIR for El Dorado Water and Power Authority's (EDWPA) "El Dorado Water Reliability Project" (proposed project). The NOP was issued on March 13, 2014.

CSPA protested the water rights application that supports the proposed project in July, 2009, stating nine conditions for dismissal. CSPA recommends that EDWPA review these terms and address as many as possible in its forthcoming DEIR. CSPA recommends that EDWPA particularly consider dismissal condition number 6: the recommendation that a portion of the proposed water right be explicitly designated in the permit as a drought reserve for El Dorado County. Given the new title of the proposed project, recent short-term actions by El Dorado Irrigation District to reduce instream flows below Silver, Caples and Echo lakes in order to assure minimal adequacy of water deliveries in 2013, and requests for flow variances in many other parts of the state, CSPA believes that this recommendation is both basic and timely. CSPA recommends an initial analysis that would size this reserve at 10,000 acre-feet.

CSPA also commented on EDWPA's 2010 DEIR for an earlier incarnation of a proposed project. In our 2010 comments, CSPA was particularly critical of the inadequate description of baseline conditions in the Sacramento-San Joaquin Bay-Delta estuary. CSPA recommends that the new DEIR avoid the inadequacies of the earlier description of Bay-Delta baseline conditions. We also recommend that EDWPA review the remainder of our 2010 comments, and affirmatively respond in the DEIR to as many of the issues we raised there as possible.

The proposed project envisions a water right based on partial assignment of a "county of origin" state filing with a 1927 priority date. The proposed project envisions that many years

will be needed to fully put the water to beneficial use within El Dorado County, and that in the interim the County will bank the water in Sacramento County or sell it downstream of the American River once the water is used to provide fish and wildlife beneficial uses in the lower American River from Folsom Reservoir to the confluence of the American River with the Sacramento River. The DEIR should carefully state and describe the legal theory that supports either short term or long term transfers of county of origin water outside the county of origin. The DEIR should also demonstrate, to the degree possible, why such long term transfers, both generally and in the particular, are in the public interest.

The proposed project has become more complex than the previously proposed iteration. In order to allow evaluation of the new proposed project, the DEIR should carefully explain how water accounting will be performed in implementing its various phases.

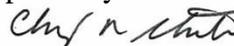
Assuming that legal basis for out of county transfers exists, the DEIR must be explicit in describing the end use of the water. In *Central Delta Water Agency v. State Water Resources Control Bd.* (2004) 124 Cal.App.4th 245, 253, the court found:

We conclude that under the state Constitution and the Water Code an application for a permit to impound water in a reservoir must state, and the Water Board must determine, that an actual, intended beneficial use, in estimated amounts, will be made of the impounded waters. A general statement of potential beneficial use is insufficient and the Board may not satisfy its statutory and constitutional obligations by conditioning a permit on a particular use and in amounts to be specified at some later date.

Again assuming that a legal basis for out of county transfers exists, the DEIR should evaluate different alternatives for end use. The NOP includes the service areas of the State Water Project (SWP) and the Central Valley Project (CVP) as potential transfer end targets. The NOP should consider alternative end uses, particularly west of Delta, north of Delta, east of Delta, and in-Delta, and compare the impacts of transfers to these destinations with destinations that would require use of the SWP and CVP pumping facilities in the south Delta. The DEIR must thoroughly analyze the environmental impacts of SWP and CVP south Delta pumping facilities in analyzing any transfer that would require use of these facilities. The DEIR must state not only the incremental impacts of such transfers, but must analyze the use of these facilities as part of the cumulative impacts on a baseline condition of severe degradation of the Bay-Delta ecosystem.

Thank you for the opportunity to comment on the Notice of Preparation. CSPA looks forward to reviewing the DEIR and to future discussions with EDWPA.

Respectfully submitted,



Chris Shutes

Water Rights Advocate

California Sportfishing Protection Alliance