



# California Sportfishing Protection Alliance

"An Advocate for Fisheries, Habitat and Water Quality"

## Summer CSPA Newsletter, July 2023

### *From the Desk of Chris Shutes*

Governor Newsom was quoted in the [June 29, 2023 San Francisco Chronicle](#) as saying: "We have a lot of existing laws on the books. I'd like to see us start to enforce the damn existing laws. ... I'll be honest with you, my biggest gripe right now in San Francisco has been, frankly, we're not enforcing existing laws ... we're not prosecuting the lawbreakers. Judges, D.A.s, the whole panoply — I want to see people held accountable for breaking the law."

Funny, **that's what CSPA has been saying about environmental laws for the past thirty years!** As it has said on our website for over a decade, "California has many laws protecting fisheries and water quality but a poor track record of enforcing them."



Governor Newsom has taken **non-enforcement of laws to protect fish, water, and the environment** to a new low. The title of our blog on February 26, 2023 sums it up: [Water Quality, Fish and Wildlife Protection – It's All Voluntary](#).

Consider recent events to understand why CSPA protects your rights because the government declines to enforce laws that protect fish and the waters they live in:

- The Newsom Administration is falling over backwards to substitute "voluntary agreements" for enforceable flow requirements in the Bay-Delta Plan.
- In drought years 2014 and 2015, the State Water Board refused to require reductions in water supply for agriculture. CSPA sued and reached a settlement with the state.
- In drought years 2021 and 2022, the State Water Board showed that the settlement from the previous drought did not improve the willingness of the Board to enforce the law. So CSPA sued again; that litigation is ongoing.
- In February 2023, under high runoff after the drought had broken, the Governor directed the State Water Board to waive environmental flows to give more water to San Joaquin valley farmers. The fish lost a big opportunity to recover from the drought, and the farmers got water they would have gotten anyway a month or two later.
- When the Central Valley Regional Water Quality Control Board wouldn't get tough with the massive pollution caused by Mule Creek Prison in Lone, CSPA (joined by Amador County) sued the Bureau of Prisons and got a binding agreement to re-work the "sanitary" and stormwater sewers at the prison over the next 8 years.

I don't know how many times I've read in chat rooms or heard people say about the hard water and fish issues facing California: "Well, maybe CSPA will sue on that." Lawsuits are not always an option, and they don't happen overnight. After a whole lot of preliminary work and preparation, they take a lot more work and a lot more resources.

That's one place where memberships and donations are so essential: to backstop the laws that the government won't enforce. Please join or donate today to help CSPA carry on the protracted, gritty, painstaking work that so many organizations run away from.

p.s. CSPA also works really hard to come to reasonable accommodation with reasonable people to make reasonable use of California's water and to protect fisheries and water quality. For instance, CSPA, working with allied organizations, the National Hydropower Association, and representatives on Indian Tribes, was one of the main architects of the bipartisan [Senate Bill 1521](#) ("The Community and Hydropower Improvement Act") now before the US Senate. The legislation would improve hydropower licensing by giving federally recognized Indian Tribes authorities previously exercised by the Department of the Interior. It would also require the Federal Energy Regulatory Commission to establish a more defined process when license holders decide to stop operating a hydropower project; it shouldn't take 20 years to take out dams that have outlived their useful purpose.

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## CSPA Puts a Halt to Massive Wastewater Pollution from Mule Creek State Prison

By Cindy Charles

In May 2023, CSPA and Amador County entered into a lawsuit settlement with the California Department of Corrections and Rehabilitation (CDCR) regarding violations of the Clean Water Act at Mule Creek State prison in Lone, CA. Under the terms of the agreement, CDCR will repair or replace the prison's stormwater and wastewater systems over the next eight years. The parties estimate that the consent decree will require approximately \$10,000,000 in state funding to implement.

The facts in the case were brought to the attention of the Central Valley Regional Water Quality Control Board in 2018, when it began receiving reports from local citizens describing brownish, steaming hot water discharging from the prison directly into Mule Creek. The Department of Corrections itself identified widespread leaks and capacity deficiencies in both sets of Mule Creek State Prison's sewer lines.

At the insistence of local activist Katherine Evatt, Richard McHenry, CSPA's Director of Permits and Compliance, flagged the issues with Mule Creek State Prison for CSPA in 2020 and provided guidance as the case developed. Dr. Robert Emerick ably assisted CSPA as its technical expert witness.

After obtaining a court order to inspect and take water samples at the maximum-security prison, CSPA and the County analyzed the samples and found high concentrations *E. coli* and fecal coliform. CSPA and the County also analyzed the samples for Pharmaceuticals and Personal Care Products ("PPCPs") and found caffeine, acetaminophen and other pharmaceuticals in the prison's storm water system during dry weather.

The pollution affected prison grounds, the lands downhill from the prison, Mule Creek, Dry Creek, and in very high flows, the Mokelumne and Cosumnes Rivers and the San Francisco Bay Delta. This settlement will improve conditions for prison inmates and staff, for the City of Lone, for local landowners, and for Amador County.

Once again, CSPA has upheld water quality regulations in California.

The case was one of the last major water quality actions initiated by CSPA's late Executive Director, Bill Jennings.



Mule Creek State Prison, Lone CA

Photo: CA Dept. Corrections & Rehabilitation

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**CSPA Successfully Defends the Clean Water Act Again and Again**

By Cindy Charles

This spring, CSPA celebrated a huge victory in its multi-year fight to defend the federal Clean Water Act when the U.S. Supreme Court denied two separate appeals from four California irrigation districts and a water agency. It took over three years of fighting back against attacks on Section 401 of the Clean Water Act, but CSPA and allies were winners in the courtroom. We were instrumental in upholding the California State Water Board Resources Control Board's authority on the laws to protect water quality for our rivers, fish and environment.

The Clean Water Act is the nation's bedrock law that protects water quality. Its goal is to keep America's waters "fishable, swimmable, and drinkable." Section 401 of the federal Clean Water Act requires a hydropower dam operator to obtain a certification by a state agency that operation of a hydropower project under a new Federal Energy Regulatory Commission (FERC) license will be consistent with the state's standards for water quality. In California, the State Water Resources Control Board is responsible for issuing 401 certifications for hydroelectric projects. Mandatory conditions within FERC licenses and 401 Certifications typically apply for 40-50 years. This is why the legal battles are so important in the long run.

In several federal hydropower dam relicensings, the dam owners tried to avoid California state regulation of their projects by embarking on legal challenges to the requirement of obtaining the 401 certifications. CSPA and allies, and their attorneys, fought back in multi-year legal and regulatory proceedings.

### **Win #1 for the Tuolumne River**

Turlock Irrigation District and Modesto Irrigation District (the Districts) originally petitioned the Court to waive "water quality certification" for the relicensing of their Don Pedro Hydroelectric Project and the licensing of their smaller La Grange Hydroelectric Project on the Tuolumne River. In June, 2022, the D.C. Circuit of the U.S. Court of Appeals ruled the California State Water Resources Control Board had not "waived" its opportunity under Section 401 of the Clean Water Act to issue a "water quality certification" for the two projects. The Districts had alleged that the Board's denials of certification were part of a "scheme" to delay action. A panel of D.C. Circuit judges found that the State Board had "acted" by denying the Districts certification.

The Districts then went to the U.S. Supreme Court asking for an appeal to overturn this decision. In April 2023, the U.S. Supreme Court declined to hear the appeal, which effectively upheld California's authority to add mandatory conditions in the new licenses for the two hydroelectric projects on the Tuolumne River.

### **Win # 2 for the Merced & Yuba Rivers**

In May 2023, the U.S. Supreme Court declined to hear an appeal regarding the California State Water Resources Control Board's authority to set mandatory conditions in new operating licenses of the Merced River, Merced Falls, Yuba-Bear, and Yuba River Development hydroelectric projects. The appeal was filed jointly by the Merced Irrigation District (Merced ID), Yuba County Water Agency (YCWA) and the Nevada Irrigation District (NID) in February 2023.

The water agency and irrigation districts sought to overturn an August 2022 ruling by the U.S. Court of Appeals for the Ninth Circuit. The Ninth Circuit Court overruled and vacated orders issued by FERC in which FERC held that the State Water Board had "waived" its authority under Section 401 of the Clean Water Act to issue a water quality certification for each of the projects.

The denial by the Supreme Court means that the State Water Board will set conditions for Merced ID's Merced River Project and Merced Falls Hydroelectric Project on the lower Merced River; YCWA's Yuba River Development Project on the lower Yuba, North Yuba, and Middle Yuba rivers; and NID's Yuba-Bear Hydroelectric Project on the Middle Yuba, South Yuba, and Bear rivers.

The rejection by two federal courts of industry's faulty and time-consuming legal and procedural schemes helps to restore process discipline to the hydropower licensing process. The State's 401 certifications will help protect the waters of the Tuolumne, Merced, Yuba and Bear Rivers in our state.

### **What's Next?**

The water quality certifications for these projects on the Merced River, Yuba River, and Bear River, as well as the projects on the Tuolumne River, are still in process before the State Water Resources Control Board and are under legal challenge in state court.

CSPA and allied organizations will continue to defend Section 401 of Clean Water Act, both by upholding state authority and insisting on its legally defensible application. CSPA has petitioned the State Water Resources Control Board for reconsideration to improve the water quality certifications for the Don Pedro, La Grange, and Yuba River Development projects.



A brimful Lower Tuolumne River – June 30, 2023 at La Grange

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## **CSPA NEEDS YOUR SUPPORT NOW!**

***THIS NEWSLETTER REPORTS ON JUST A FEW FRONTS WHERE CSPA HAS BEEN FIGHTING FOR OUR FISH AND CLEAN WATER.***

***IT TAKES A LOT OF TIME AND EXPERTISE. WE HAVE BEEN WINNING SOME KEY BATTLES. WE NEED YOUR SUPPORT NOW TO CONTINUE OUR MOMENTUM.***

***PLEASE BECOME A MEMBER OF CSPA OR MAKE A DONATION HERE.***

**BECOME A CSPA MEMBER**

**DONATE TO CSPA**

***YOUR CONTRIBUTION SUPPORTS OUR DECADES OF WORK, ALLOWS US TO EXPAND OUR EFFORTS, AND BRINGS HOPE FOR THE FUTURE.***



Spawning Fall-Run Chinook Salmon- Stanislaus River

November 2022

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