

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 – (Applications & Petitions)**

**BASED ON ENVIRONMENTAL OR PUBLIC INTEREST CONSIDERATIONS**

**APPLICATIONS: 5645X12 and 5644X02**  
**PETITIONS FOR PARITAL ASSIGNMENT OF STATE FILINGS: 5645 and 5644**  
**PETITIONS TO CHANGE STATE FILED APPLICATIONS: 5645 and 5644**

**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 May 11, 2009 notice, applications and petitions including supporting documents relative to a Applications 5645X12 and 5644X02, Petitions for Partial Assignment of State Filings 5645 and 5644, and Petitions to Change State Filed Applications 5645 and 5644, to divert and store water at various points in the American River watershed within El Dorado County and Sacramento County, as given in the Notice. A copy of the Notice is appended to this protest.

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
- (4) have an adverse environmental impact** **x**

**State Facts, which support the foregoing allegations:**

Applicant and petitioner El Dorado Water and Power Authority (EDWPA) seeks partial assignment of two state filings in order to gain appropriative diversion and storage rights. EDWPA proposes to store 30,000 afy, and eventually up to 40,000 afy in Loon Lake, Ice House and Union Valley reservoirs owned by the Sacramento Municipal Utilities District (SMUD). These reservoirs are part of SMUD's Upper American River Hydroelectric Project (UARP).

The California Sportfishing Protection Alliance (CSPA) is a signatory to the Settlement Agreement signed in 2007 for the combined relicensing of the UARP and Chili Bar Project (the latter is located downstream of the UARP on the South Fork American River), and has a particular interest in protecting the terms and benefits of that settlement. Among the interests in the UARP – Chili Bar Settlement that CSPA seeks to defend are a series of streamflows in streams affected by the operation of the UARP. CSPA is also especially concerned with summer lake levels in the UARP's storage reservoirs, both for their recreational values and in order to preserve their cold water pools, which may affect water temperatures in streams downstream.

CSPA is also a signatory to a settlement agreement with El Dorado Irrigation District (EID), which is the largest water purveyor within the EDWPA. That settlement agreement, on which the League to Save Sierra Lakes was

the lead environmental signatory, relates to litigation concerning a previous partial assignment of State Filing 5645. CSPA has a strong interest in assuring that the terms of that settlement, and related Water Right Order 2001-22, are carried out. Notably, the temperature control device for EID's diversion at Folsom Reservoir, which is mandated as part of WRO 2001-22, has not yet been installed, and some concern has been expressed over the availability of funding to install a state-of-the-art device.

CSPA commented extensively on the April, 2007 Water Resources Development and Management Plan put forth by the El Dorado County Water Agency, upon which the demand projections for the present application are in large part based. In those comments, CSPA called attention to the County's high demand projections per acre of irrigated land, to the fact that cost projections were not grounded in solid analysis and that demand projections were suspect because of cost, and that the County risked overdeveloping water infrastructure and then becoming dependent on development to pay for it. On this latter point, EID finds itself in such a position today, given the downturn in the housing market and diminishing returns on investments. CSPA notes that the epoch in which the El Dorado County General Plan was passed (2005) was at the height of the housing boom, and projections of future growth within the County at that time were widely held to overstated (the Plan was approved by voters by a margin of less than 1%). Current economic realities call those projections into question even further.

To its credit, EID has developed a significant recycled water distribution system. It was also effective in encouraging significant conservation during the drier years of 2007-2008. Demand figures should be carefully scrutinized to establish the degree to which a permanent conservation program can further reduce long term water demand within the County.

Over the last ten years, El Dorado water interests have promoted water storage development based on the need to create a "drought reserve." However, there appears to be no provision for such a reserve or even thought given to it in the present set of applications and petitions. As CSPA stated in comments on the April, 2007 County water Plan, "there is nothing that addresses the issue of how the County will avoid a situation where newly developed water supplies quickly become as fully appropriated as present supplies, and where even further supplies are needed to protect the users of the newly developed supplies from drought or simply from lack of water in dry water years."

The applications/petitions ask the Board to reserve jurisdiction to consider in the future new points of diversion within the UARP itself. Such new points of diversion would greatly increase the environmental impacts of any new permits by taking water out of the South Fork American system much farther upstream than is presently proposed, reducing water available for streamflows, and also opening the door to creating a new storage reservoir or reservoirs, rather than re-operating existing facilities.

Water that is diverted out of the American River watershed upstream of Folsom Dam has the potential to reduce water available for instream flow needs in the Lower American River. Water that is diverted upstream of Folsom Reservoir or from Folsom Reservoir also has the potential to reduce cold water available for cold water management in that reservoir. Water that is diverted from Folsom Reservoir, and water that is stored in the UARP to meet El Dorado County's water supply demands, have the potential to change the timing of releases of water out of the UARP and thus alter the temperature of water entering Folsom Reservoir and the hydrodynamics and thermal stratification of the reservoir. This in turn has the potential to alter water temperatures in the Lower American River.

The National Marine Fisheries Service's Biological Opinion for salmon, steelhead and green sturgeon for the Operations Criteria and Plan for the Central Valley Project and the State Water Project directs the Bureau of


Reclamation to improve management of Folsom Reservoir and the Lower American River for water quantity and temperature. The present applications have the potential to affect the Bureau of Reclamation's ability to carry out these directives.

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

1. EDWPA must produce adequate and complete environmental documentation for the project related to these applications/petitions. Given the complexity and extent of these applications/petitions, CSPA reserves the right to state additional conditions for protest dismissal based on environmental documentation for the project.
2. EDWPA's environmental documentation must show how it will avoid violating, conflicting with and/or diminishing the terms of the UARP – Chili Bar Settlement Agreement and the forthcoming FERC licenses and 401 Certification conditions for the UARP and the Chili Bar Project, specifically but not exclusively in relation to streamflows, lake levels, and recreation.
3. EDWPA must agree to a state-of-the-art temperature control device on any takeout it installs in Folsom Reservoir in order to put water to use under these applications/petitions.
4. EDWPA and its members must develop a comprehensive water conservation plan for the areas to be served under these applications/petitions. EDWPA and its members must demonstrate the need for the water applied for in consideration of such a plan.
5. EDWPA must identify in environmental documentation a secure and reliable funding source for projects related to these applications/petitions, including necessary mitigations.
6. EDWPA must develop a plan to use a portion of the water to be stored under these applications/petitions as a drought reserve, and agree to have this plan incorporated into the corresponding water rights permits.
7. EDWPA must remove from its applications/petitions the request that the State Board reserve jurisdiction to grant additional points of diversion within the UARP.
8. EDWPA must demonstrate specifically how its project will interact with management of Folsom Reservoir, particularly for cold water, and of the Lower American River. EDWPA must demonstrate that its project will not adversely affect fisheries affected by said management.
9. EDWPA must demonstrate that its project is compatible with the requirements set forth in the Biological Opinion for salmon, steelhead and green sturgeon for the Operations Criteria and Plan for the Central Valley Project and the State Water Project. EDWPA must consult with the National Marine Fisheries Service and the U.S. Fish and Wildlife Service regarding project effects on listed species, and comply with Biological Opinions issued by the respective Services for this project.

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

Dated: July 8, 2009  
Chris Shutes, FERC Projects Director,  
Bill Jennings, Executive Director  
Michael Jackson  
California Sportfishing Protection Alliance

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