

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.waterrihts.ca.gov>

PROTEST – (Petitions)

BASED ON ENVIRONMENTAL OR PUBLIC INTEREST CONSIDERATIONS
Protests based on Injury to Vested Rights should be completed on other side of this form

APPLICATION: 1699 LICENSE: 2033

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. (Name and address of Protestant)

have read carefully a notice relative to a petition for temporary urgency change of **Garden Highway Mutual Water Company**, under application 1699 for license 2033, to transfer water from North 72° 00' E, 4,130 feet from the SW corner of Section 24, T13N, R3E along Sutter Bypass borrow pit to the Drought Water Bank, for use within the Central Valley Project (CVP) and State Water Project (SWP) service areas.

It is desired to protest against the approval thereof because to the best of our information and belief:

The proposed application/petition for water will:

- (1) not be within the State Water Resources Control Board's (SWRCB) jurisdiction
- (2) not best serve the public interest** **x**
- (3) be contrary to law** **x**
- (4) have an adverse environmental impact** **x**

State Facts, which support the foregoing allegations:

A temporary urgency transfer is requested to the Drought Water Bank, whose existence is supported on the basis of a declaration of emergency by the Governor of drought conditions. However, the alleged emergency is not based on precipitation: the May 1, 2009 Department of Water Resources Bulletin 120 forecasted 80% of average precipitation statewide, and 70% of average runoff, for Water Year 2009. The May 26, 2009 update to Bulletin 120 showed substantially higher predicted runoff for most areas of the state, based on significant rainfall in the month of May. The drought that has been declared by the Governor is largely a product of management choices made by the Bureau of Reclamation and DWR over the last three years, combined with the systemic over-allocation of water statewide.

Because the declaration of an emergency is based on conditions that are perennial, and on avoidable conditions occasioned by poor management choices, and because the proposed transfer is one of many to a Drought Water Bank whose cumulative effects have not been analyzed, the exemption from environmental review under CEQA, on the grounds of a temporary urgency as claimed by petitioner and in the Notice issued by the SWRCB, is without legal basis. It is also not in the public interest, since environmental review is one of the cornerstones of protecting the public interest.

Further, the petition seeks to add points of diversion of both the State Water Project and the Central Valley Project. Because such consolidation has no legislative authorization, it is contrary to law.

The Drought Water Bank, to which the water is proposed to be transferred, is relying on an improper EIS/EIR and an uncertified and improper supplemental EIS/EIR for the Environmental Water Account, both of which are for an unrelated project. Such reliance is contrary to law.

The proposed transfer has potential significant impacts, particularly when considered cumulatively with an apparently increasing number of proposed transfers to the Drought Water Bank, well in excess of the cap specified in WRO 2009-0033. These include impacts to Delta pelagic fisheries, notably several listed species such as Delta smelt, occasioned by consolidation of SWP and CVP points of use and facilities, as well as by increasing the amount of water put through SWP and CVP pumps. These actions will increase water quality impacts and will increase entrainment into Delta pumps, or otherwise cause mortality, of both pelagic fishes and also migrating anadromous salmonids, including Central Valley Chinook salmon, whose returns have dropped to catastrophic levels, and Central Valley steelhead. Central Valley steelhead, Spring-run Chinook salmon, and Winter-run Chinook salmon are all listed pursuant to the Endangered Species Act. The cumulative effects of the ensemble of proposed transfers have not been analyzed for their impacts on listed species in particular.

In addition, groundwater substitution may have indirect or cumulative impacts on instream habitat for salmonids and other fish, and for the ESA-listed giant garter snake, by reducing wetlands, floodplain inundation, and/or tributary inflow to the Sutter Bypass and/or the Sacramento River.

Under what conditions may this protest be disregarded and dismissed? None, other than withdrawal of petition by applicant.

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

Date: June 3, 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)

Protestant(s) Authorized Representative sign here

Certificate of Service

I hereby certify that on this day, June 3, 2009. I, Chris Shutes, have placed in first class mail at Berkeley, California, a true copy of this protest mailed to:

Garden Highway Mutual Water Company
Nicole Van Vleck
12755 Garden Highway
Yuba City, CA 95991

Chris Shutes