

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: 14804 LICENSE: 11118

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 **South Sutter Water District**, under application 14804 for license 11118, noticed on May 1, 2009, to transfer water from Camp Far West Reservoir and Camp Far West Diversion 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.

There are also adverse impacts to instream resources of ongoing SSWD operations. Of the water that passes through the Bear River each year, an average of 312,000 acre-feet is imported from the South Yuba watershed. The South Yuba River has been officially proposed for 303(d) listing by the Central Valley Regional Water Quality Control Board as temperature-impaired. Temperature monitoring performed for the Upper Yuba River Studies Program and for the relicensing of the Yuba-Bear and Drum-Spaulding hydroelectric projects has shown that summer water temperatures in the South Yuba River routinely exceed standards for cold freshwater habitat for almost the entire length of the river from just downstream of Lake Spaulding all the way to Englebright Reservoir. If, as SSWD claims, there is no local impact to groundwater conditions in the SSWD service area that is caused by sale of 10,000 acre-feet of water from storage on the lower Bear River in two consecutive dry years, the SWRCB should consider finding the excess import of that water from the South Yuba watershed to be wasteful and unreasonable use, which is contrary to the Water Code.

Moreover, water in Camp Far West Reservoir is in part supplied by a Nevada Irrigation District diversion on Coon Creek. Anadromous salmonids, including listed Central Valley steelhead, have been documented in Coon Creek. However, no minimum instream flow is required in Coon Creek downstream of NID's "Camp Far West Diversion." Environmental review would demonstrate this lack, and would properly occasion consideration by the SWRCB of setting instream flow requirements to protect these valuable public trust fisheries resources.

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 2, 2009.

Chris Shutes, FERC Projects Director,

Bill Jennings, Executive Director

Michael Jackson

California Sportfishing Protection Alliance

Protestant(s) Authorized Representative sign here

Certificate of Service

I hereby certify that on this day, June 2, 2009. I, Chris Shutes, have placed in first class mail at Berkeley, California, a true copy of this protest mailed to:

South Sutter Water District
Marc Van Camp
MBK Engineers
2450 Alhambra Blvd., 2nd floor
Sacramento, CA 95817

Chris Shutes