

State of California
State Water Resources Control Board
DIVISION OF WATER RIGHTS
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PROTEST – (Applications)

BASED ON ENVIRONMENTAL OR PUBLIC INTEREST CONSIDERATIONS

APPLICATION: T033391

We, Chris Shutes, Executive Director, California Sportfishing Protection Alliance (CSPA), 1608 Francisco St., Berkeley, CA 94703, blancapaloma@msn.com, (510) 421-2405 and Angelina Cook, Restoration Associate, CSPA, P.O Box 1117, McCloud, CA 96057, angelina@shastaheadwaters.com, (530) 859-2083 have read carefully the State Water Resources Control Board's (State Water Board) notice regarding Application T033391 of South Sutter Water District.

We protest this application and these petitions because:

- 1) They would have adverse environmental impacts.
- 2) They would not best conserve the public interest.
- 3) They would not best conserve the public trust.

We state the facts that support our allegations, our reasons for the protest, and our terms for withdrawing the protest, in the Attachment below.

A true copy of this protest has been served upon the applicant and petitioner by e-mail at hcornwell@southsutterwd.com.

Date: October 16, 2023

Chris Shutes, Executive Director
California Sportfishing Protection Alliance



Angelina Cook, Restoration Associate
California Sportfishing Protection Alliance



Attachment
Protest of the California Sportfishing Protection Alliance of
Application T033391 of South Sutter Water District

The California Sportfishing Protection Alliance protests water rights Application T033391 of the South Sutter Water District relative to the proposed Bear River diversion for groundwater recharge.

We protest this application because:

- 1) It would have adverse environmental impacts.
- 2) It would not best conserve the public interest.
- 3) It would not best conserve the public trust.

I. Introduction

South Sutter Water District's (SSWD) application for a temporary water right to appropriate surface water for aquifer recharge will deplete valuable instream flows. In seeking to set flow requirements for the temporary permit, SSWD sets aside the State Water Resources Control Board's (State Water Board) default methodology for determining water availability as given in the Water Availability Analysis for Streamlined Recharge Permitting.¹ Specifically, SSWD's Application rejects the "90/20" method for determining water availability on the grounds that this method would be too restrictive.² Instead, the Application proposes to allow diversions whenever the pending minimum instream flows for the upstream Camp Far West Hydroelectric Project are exceeded and when the Delta is in Excess Conditions.³ These flow requirements will have adverse environmental effects, will not best conserve the public trust, and particularly as a precedent are not in the public interest.

II. The proposed flow requirements would have adverse environmental impacts.

The Application underestimates the value of non-appropriated flows for performing ecosystem services. Diversions as proposed will reduce sediment transport and floodplain inundation, and will harm salmonids and sturgeon in the Bear River by reducing the frequency and magnitude with which spill flows provide juvenile rearing habitat. In addition to juvenile fall-run Chinook natal to the Bear River, the backwater of the Bear River upstream of its mouth at the Feather River created by spill flows from Camp Far West Reservoir provides juvenile rearing habitat for fall-run and spring-run Chinook salmon, steelhead, and sturgeon spawned in the Yuba and Feather rivers. This area of non-natal rearing is an important velocity refuge and source of food adjacent to a reach of the Feather River that is leveed and limited in habitat value.

The Bear and Feather rivers are tributaries of the Sacramento River, and the proposed diversion will thus reduce flows in these rivers and into the Delta, harming fish and other aquatic

¹ See State Water Board, [Water Availability Analysis for Streamlined Recharge Permitting](#).

² See Application, pdf pp. 75-76 (MBK Technical Memorandum, pp. 1-2)

³ *Id.*, p. 2.

organisms. The closure in 2023 of California’s commercial, sport fishing and Tribal salmon fisheries illustrates the importance of uncaptured flows to the Delta. For state and federal agencies to recover keystone species currently at the brink of extinction, instream flows in all Sacramento tributaries must be as high, not as low, as possible. The Bay-Delta Plan update explicitly highlights the need to protect uncaptured flows relied on by these public trust resources, and once adopted will require bypass of substantial flows from tributaries to the Delta downstream of rim dams such as Camp Far West Reservoir.⁴

III. Allowing diversion of all flows above minimum flow requirements sets a bad precedent for diversions for groundwater recharge, contrary to the public interest.

The Board set forth a global standard, the 90/20 rule. This is an approximation of a definition of excess flows for purposes of recharge. Conceptually, it is necessary. It needs to be refined into a permanent rule that sets expectations and protects high flows, particularly in the wet season. But until there is a permanent rule, the Board should stick with the 90/20 Rule.

Even if one were to accept (and we don’t) the argument that 90% exceedance is too high for the Bear River, the Application gives no justification for ignoring the 20% aspect of the 90/20 Rule, which would limit a diversion to 20% of the flow. Scalping the first flows above minimum, up to the limits of the diversion works or recharge capacity, is too frequent and too harmful.

IV. The proposed water right will promote water speculation, contrary to the public interest and public trust.

SSWD routinely sells water out of its service area while relying on groundwater substitution to meet irrigation demand within its service area.⁵ Allowing diversion of water from the public trust in order to enable future water sales amounts to water speculation, contrary to the public interest and the public trust.

V. Conditions under which the protest may be dismissed.

1. The State Water Board should deny the Application.
2. If the State Water Board grants the Application, it should require application of the 90/20 Rule.

⁴ See, e.g., State Water Board (2017), Scientific Basis Report in Support of New and Modified Requirements for Inflows from the Sacramento River and its Tributaries and Eastside Tributaries to the Delta, Delta Outflows, Cold Water Habitat, and Interior Delta Flows (Scientific Basis Report), p. 3-55. Available at: https://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/docs/2022/201710-bdphaseII-science-report.pdf.

⁵ See, e.g., Notices of Petitions of SSWD to transfer water under Application 14804: May 1, 2009; May 30, 2014; June 1, 2015; April 19, 2018; July 26, 2022; and July 28, 2023. All available at State Water Board transfers webpages at: https://www.waterboards.ca.gov/waterrights/water_issues/programs/applications/transfers_tu_notices/pre-2022-index.html#yr2014 and https://www.waterboards.ca.gov/waterrights/water_issues/programs/petitions/transfers.html.

3. If the State Water Board grants the Application and modifies the 90/20 Rule for site-specific reasons, the Board should condition the permit on the 20% Rule and a minimum flow bypass requirement at the Point of Diversion of 1000 cfs.
4. If the State Water Board grants the Application, it should condition the permit on a minimum flow requirement for Delta outflow of 55% of the unimpaired flow.
5. If the State Water Board grants the Application in any form, it should condition the Permit on prohibition of water sales out of basin by SSWD for ten years.