



Fall CSPA Newsletter, October 2021

From the Desk of Bill Jennings

I hope each of you have had an opportunity to wet a line during this second drought year. Fisheries have grievously suffered, as they did during the critical drought years of 2014 and 2015. California is experiencing its worst drought since the late 1800s, as measured by both lack of precipitation and high temperatures. But there is still so much to protect and enjoy.



August 2021 was the driest and hottest August on record, and the water year that ended last month was the second driest on record. Excessive water deliveries to settlement and exchange water contractors have depleted State and Federal Project reservoirs to historic low levels of storage. Another drought year will bring California into uncharted territory, and that appears to be likely, given another *La Nina*.

In the Central Valley, flow and water quality is a continuum. What happens in the estuary affects flow and water quality in the high Sierras. Water storage in the rim reservoirs directly affects both Delta flow/water quality and Sierra storage reservoirs. CSPA labors in the trenches of the regulatory and legal processes, and sometimes we get a little wonky in our posts. But it's all focused on securing adequate flow and water quality, from the Sierras through the estuary.

For example, following an extensive administrative proceeding, CSPA is preparing twin lawsuits over the weakening of standards and violation of those weakened standards regarding the 2021 Sacramento River Temperature Management Plan and the weakening and violations of flow/water quality standards in the Delta. These lawsuits represent an effort to ensure that future management of California's water projects protects fisheries, even in dry years.

Most of us at CSPA fish, and our fishing like everyone else's has suffered during the drought. We begin this newsletter with **"Protecting Places Near and Dear"** by Chris Shutes on a few of his fishing experiences over the year. Following that is an extensive article **"CSPA Is Working Hard to Restore & Defend the Clean Water Act in California"** by Cindy Charles regarding our efforts to restore and defend the Clean Water Act in California. This article is subdivided into sections on *EPA's efforts to revise Section 401 of the Act*, *our efforts fighting waivers of 401 Water Quality Certifications*, and *our intervention to support certification decisions on Tuolumne River hydropower projects*. We then feature another article, **"CSPA & Allies Granted Intervention in Court Case to Support Certification Decision on Tuolumne River Hydropower Projects"** by Cindy on our federal lawsuit against the Bureau of Reclamation over excessive groundwater pumping by Sacramento River Water Districts. We conclude with an article by Chris and Cindy about the **fight for flows and habitat restoration on the Yuba River**.

I believe we can reasonably say that CSPA's involvement has made California fisheries and water quality considerably better. In addition to our [Main Website](#) that periodically chronicles our efforts, please check out our [Fisheries Blog](#) that features weekly posts on diverse aspects of California's fisheries.

We don't accept funds from sources that would limit our efforts to protect fisheries. So we rely on your [donations](#) and [memberships](#). Thank you for your continuing support. Cheers!



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Protecting Places Near and Dear

By Chris Shutes

The “S” in CSPA stands for Sportfishing. That’s where it starts and ends for me.

Unfortunately, the summer of 2021 saw the ends of several my favorite fishing spots, at least as I knew them. They burned. They even burned within weeks after I fished there. I felt like a wildfire Typhoid Mary.

I fished the Belden reach of the North Fork Feather the third week in June. The Dixie Fire burned it up in July.

I tried to fish East Carson the last week in June. It was blown out by mud kicked up by thunderstorms. Those storms started the Tamarack Fire that a week later burned its way around Markleeville and down the banks of the East Carson into Nevada.

I fished the Silver Fork of the American the last week in June. The Caldor Fire burned the watershed from top to bottom in August.

The Silver Fork was particularly heartbreaking. It was one of the first rivers I protected as an advocate. In the El Dorado Settlement Agreement, I made sure that some part of the Silver Fork’s 18 miles fishes well from snowmelt through September.



The outcome of the Caldor Fire in the nearby Caples Creek watershed was better. Caples is over a ridge from the Silver Fork. A prescribed burn in 2019 cleared much of the understory of the forest in Caples Canyon. Caldor spared several miles where some of the best water in Caples Creek lies. We can thank Duane Nelson, formerly with the Forest Service, and a bunch of other folks who had the foresight to organize the controlled burn and get it done. Once the Forest Service reopens these two canyons to the public, it will be very interesting to contrast the fire’s effects.

The Dixie Fire burned the Belden reach of the North Fork Feather from its top at Belden

Forebay, all along Caribou Road, down to its bottom at Highway 70. The Belden reach is one reach of the North Fork Feather that even PG&E hadn’t managed to completely screw up. Despite PG&E’s best efforts to use its hydropower system as a water heater, the water temperatures have up till now been just cool enough most of the time to keep the trout in the Belden reach in pretty good shape.



The Belden reach had greatly improved in 2017 after months of high flows in a water year that coincided with a fortuitous prolonged outage of PG&E’s Belden Powerhouse. Eight months of high flows blew out decades of vegetation that had crowded the banks of the river and made access maddeningly difficult. In June, I was up with a colleague from American Whitewater and two colleagues from the Forest Service looking at places along the river where access could be improved even more and maintained. Two of us took the opportunity to fish four or five hours after driving and stopping along Caribou Road. There was a good caddis hatch, and mayflies late in the day.

When that forest reopens, it will be a whole new ball game. The canopy of trees that largely shaded the North Fork Feather along Caribou Road has burned. We’ll see how much silt and fire debris choke the river. Access may be easier at first, but may get worse as brush and small woody plants establish themselves. And we’ll have to see what loss of the forest canopy does for water temperatures that were hovering on the edge of excess. It will be another front in CSPA’s decades-long tug-of-war with PG&E to do better by the North Fork Feather.

Both the Silver Fork of the American River and the Belden reach of the North Fork Feather River are good, not great, trout streams. They are an important part of the fabric of California's waters: solid, blue collar streams where skill and hard work pay off with good fish and day of relative solitude. They are important for people like me who have to drive several hours to get there. They are important for people who can drive there in an hour after work.

It is important to protect more than just the monuments. The "blue ribbon" waters of California support guides and businesses, and they are essential. The blue collar waters are the backbone of opportunity, and their viability makes the blue ribbon streams better too. I sometimes want to fish where everyone else does, but I also want options. Part of the joy of fishing is exploration and figuring out how to approach a stream for myself.

One of the benefits of working for a fishing organization is that I have found more places to fish and met people who knew more places still. But despite the occasional chances to piggyback fishing onto site visits, I spend less time fishing than I would if I weren't sitting in meetings talking about places to fish. My colleagues and I spend time clawing back one river or stream at a time so everyone has the chance to enjoy fishing in them.

During my fifteen years at CSPA, I have used the hydropower relicensing process to advocate for adequate flows and water temperatures in trout (and salmon) streams across much of California. That will continue. Fires like the Dixie Fire have shown all too painfully that it is also necessary to assure the safety of the transmission lines that connect streamside powerhouses to the broader electrical grid.

CSPA Is Working Hard to Restore & Defend the Clean Water Act in California

By Cindy Charles

CSPA has been working intensely on multiple fronts to restore and defend the Clean Water Act in California. The Federal Clean Water Act's Section 401 originally granted to states broad authority to ensure that large, federally approved projects will meet local water quality standards, pollution limits, and other requirements. Through these certifications, states have required that federal dams preserve stream flows necessary for fish and aquatic life.

In the past three years, Section 401 of the Clean Water Act has been under concerted attack.



The Trump Administration devised and in 2020 implemented a regulation that drastically limited the scope and power of Section 401. This was a direct assault on states' ability to protect their waters. CSPA and allies fought to stop the new Certification Rule and restore a regulation that meets the intent of the Clean Water Act.

Separately, several applicants for new hydropower licenses from the Federal Energy Regulatory Commission (FERC) have successfully petitioned FERC to find that California waived its right to issue a State Water Quality Certification whose conditions would be included as part of an approved new 30-50 year FERC license. CSPA has been fighting to get these waivers overturned on the grounds that they violate the Clean Water Act, that they are arbitrary and capricious, and that the alleged basis for waiver is not supported by substantial evidence.

Finally, the Turlock and Modesto Irrigation Districts began a prolonged battle to avoid a 401 Water Quality Certification for the Don Pedro and La Grange dam relicensings on the Tuolumne River, even after FERC determined the Districts are not entitled to a waiver. CSPA and others were granted the right to intervene in the court case in support of FERC's (in this case correct) determination.

The articles below give an update with details of what CSPA and allies have been doing on these three fronts: EPA's revision to regulations Concerning Section 401 of the Clean Water Act, EPA's unwarranted waivers of 401 Water Quality Certifications, and how CSPA and allies have been granted intervention in a court case to support the certification decision on Tuolumne River hydropower projects.

EPA to Revise Regulations Concerning Section 401 of the Clean Water Act

CSPA, as a member of the Hydropower Reform Coalition (HRC), submitted a comment letter in response

to the U.S. Environmental Protection Agency's (EPA) "Notice of Intention to Reconsider and Revise the Clean Water Act Section 401 Certification Rule." In June 2020, the EPA rewrote the section 401 of the Clean Water Act under the direction of an Executive Order by Trump: "Promoting Energy Infrastructure and Economic Growth." The 2020 Rule overturned 50 years of precedent and case law, severely restricting the scope of Section 401 and establishing numerous procedural obstacles.

The HRC letter requested that EPA immediately suspend the 2020 Rule, since the Agency projected it would take 2 years to revise the regulation. Due to litigation by CSPA's HRC allies, a coalition of states, and others, a federal judge in California issued a [ruling](#) on October 21, 2021 that threw out ("vacated") the 2020 Rule. CSPA and allies now have a much clearer path to advocate for improvements to regulations concerning Section 401.

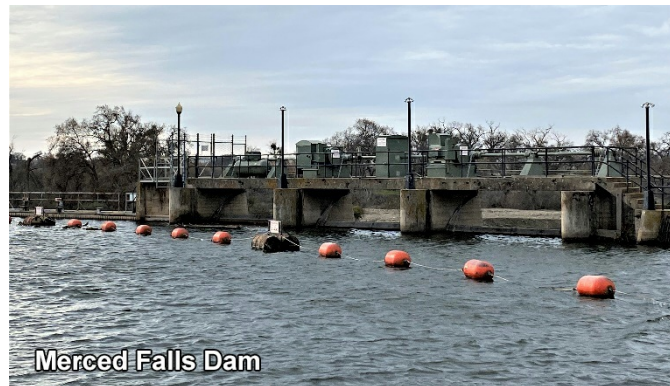


Yuba River Photo: T. Cannon

CSPA Fighting Unwarranted Waivers of 401 Water Quality Certifications

Since early 2019, CSPA, along with other environmental groups, has been vigorously contesting a series of FERC's unwarranted waivers of Section 401 water quality certifications for hydropower projects. In California, the State Water Board is the agency that issues 401 certifications for new hydropower licenses.

CSPA has filed petitions for review with Ninth Circuit US Court of Appeals, seeking to overturn waivers on the following hydro projects:



Merced Falls Dam

- Nevada Irrigation District's (NID) Yuba-Bear Hydroelectric Project
- Yuba County Water Agency's (YCWA) Yuba River Development Project
- Merced Irrigation District's (Merced ID) Merced River and Merced Falls Projects

The Ninth Circuit has consolidated these cases, including petitions for review filed by State Water Board on the same waivers, into a single case. In all three cases, the licensee withdrew and resubmitted applications for water quality certification.

A favorable development which could affect these cases happened with a recent court ruling. On July 2, 2021, the Fourth Circuit U.S. Court of Appeals issued an important decision regarding Section 401 of the Clean Water Act, overturning an Order by the Federal Energy Regulatory Commission (FERC). The Court reversed FERC's finding of waiver because the finding was not supported by "substantial evidence".

Attorneys for CSPA and allied organizations filed opening briefs in these consolidated cases on July 16, 2021. For further discussion of the issues in the cases, see https://calsport.org/news/wp-content/uploads/CSPA-Newsletter_Turbulent-Waters-fall-2020.pdf.

CSPA & Allies Granted Intervention in Court Case to Support Certification Decision on Tuolumne River Hydropower Projects

On July 16th, 2021, the U.S. Court of Appeals for the District of Columbia Circuit granted CSPA and allies to intervene into the Turlock and Modesto Irrigation Districts' lawsuits contesting FERC orders on January 19, March 22, and

May 21, 2021. These orders found that the California State Water Board did not waive Section 401 authority for the Don Pedro and La Grange licensing proceedings. CSPA, along with American Whitewater, Friends of the River, and the Sierra Club, support FERC's decision that waiver did not occur.

For further discussion of the issues of the cases, see [CSPA Opposes Turlock and Modesto Irrigation Districts' Petition for Waiver of Clean Water Act](#) ("CSPA Files Second Lawsuit against FERC over Waiver of Clean Water Act").



Tuolumne River Canyon

CSPA Sues Bureau of Reclamation over Extra Groundwater Pumping by Sacramento River Water Districts

By Cindy Charles

On August 26th, the California Sportfishing Protection Alliance, AquaAlliance and the California Water Impact Network filed a [lawsuit](#) in federal District Court against the U.S. Bureau of Reclamation (Reclamation) over the plans of a group of Sacramento River Settlement Contractors to pump extra groundwater in 2021. Reclamation's Plan would enable further groundwater pumping from an already depleted groundwater basin during the current drought. It is noteworthy that these water users have enough river water now to sell to south-of-Delta interests.



Groundwater Pumps

Reclamation seeks to pay the energy costs of extra groundwater pumping. To support this program, Reclamation issued an Environmental Assessment for Groundwater Actions to Offset Surface Water Diversions from the Sacramento River in Response to Drought in 2021. The lawsuit alleges that the impacts of the project require more extensive analysis in a full Environmental Impact Statement. The lawsuit asks the court to declare Reclamation's Environmental Assessment (EA) invalid and issue a temporary restraining order and a preliminary injunction to stop the project.

The lawsuit alleges that the extra pumping project will:

- Harm local domestic and agricultural users, the Sacramento River, streams, and riparian ecosystems.
- Have long term detrimental effects on groundwater supplies to a significant portion of the Sacramento River Valley.
- Cause significant and irreversible threats to the people and sensitive species that rely on these water resources.

The lawsuit further alleges that the EA is severely misleading and fails to provide support for its assertion that groundwater extracted by the Plan will result in up to 60,000 acre feet of surface water to remain instream. It contends that the true purpose of the extra groundwater pumping plan is for Reclamation to provide funding appeasement to the Sacramento River Settlement Contractors to avoid a lawsuit from them against Reclamation after their water deliveries were reduced because of the drought.

The call to 'pump, baby, pump' is totally unacceptable in the interest of protecting a limited groundwater resource in the Sacramento River Valley during a historic drought.

The judge denied plaintiffs' motion for an injunction that would have stopped the project while the court case was pending. Plaintiffs are now preparing a brief on the merits for a hearing scheduled later this year.

The Fight Continues for Yuba River Flows & Habitat Restoration

By Cindy Charles & Chris Shutes

CSPA presented [technical arguments](#) for much-needed improvements to flow and habitat conditions for the lower Yuba River at a workshop held on September 17, 2021. The California State Water Board held the workshop on the Board's Water Quality Certification for the relicensing of Yuba County Water Agency's (YCWA) Yuba River Development Hydroelectric Project (YRDP).

The YRDP controls flows on the lower Yuba River. The Project has been undergoing relicensing before the Federal Energy Regulatory Commission (FERC) since 2011. As part of the licensing process, the California State Water Board issued a Water Quality Certification for the project on July 17, 2020.¹ The Certification became final for purposes of appeal (or "reconsideration") on December 15, 2020.



Lower Yuba River Photo: T. Cannon

On January 14, 2021, CSPA and its allies² filed a [petition for reconsideration](#) of the Certification, arguing that the Certification fails to establish defined, enforceable conditions for flows and habitat improvements that would protect water quality and beneficial uses based on evidence in the 10-year record. Instead, the Certification kicks the can down the road for up to another 10 years by establishing a series of future studies and reviews.

The California Department of Fish and Wildlife (CDFW) and YCWA also filed petitions for reconsideration. CDFW asked the State Water Board to adopt the same flows also supported by CSPA for the lower Yuba and to require habitat improvements to the channel.

YCWA protested that the Certification left open the possibility of costly future mitigations, even though as written the Certification largely gave YCWA what it asked for. YCWA's petition further requested that the State Water Board vacate that Certification in its entirety.

The State Water Board held the workshop for the petitioners to discuss and focus on technical items raised in the petitions.

At the workshop, CSPA urged the State Water Board to revise the Certification and set flow conditions based on the record. CSPA recommended that the Board require modeling based on a reasonable range of clearly defined variables, not just the variables YCWA chose to make the Certification appear unreasonable. It asked the Board to evaluate the modeling with a focus on outputs for flow, storage and water deliveries.

As it did in a [July 30, 2021 letter](#) to Board staff responding to YCWA's legal and technical arguments, CSPA's September 17, 2021 workshop presentation asks the Board to revise the Certification. The revised Certification should include clear and enforceable conditions that will protect the fisheries and other ecological resources of the lower Yuba River over the next 50 years.

1. YCWA petitioned FERC to "waive" the State Water Board's authority to issue Certification in August 2019. CSPA and others are currently litigating the waiver. For further details, see CSPA's fall 2020 newsletter and internal links at: https://calsport.org/news/wp-content/uploads/CSPA-Newsletter_-Turbulent-Waters-fall-2020.pdf
2. CSPA's allies in this matter include Friends of the River, Sierra Club Mother Lode Chapter, South Yuba River Citizens League, and Trout Unlimited.