

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

APPLICATIONS :12912A, 15736, 15737, 19351
PERMITS: 12947A, 12949, 12950, 16596

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 February 26, 2010 amended notice and March 29, 2010 second amended notice relative to the petition for change of the Sonoma County Water Agency under Applications 12912A, 15736, 15737, and 19351, for permits 12947A, 12949, 12950, 16596, regarding the Russian River downstream of Coyote Dam in Mendocino County, and Dry Creek downstream of Warm Springs Dam in Sonoma County. We have also carefully read the petition itself. The Sonoma County Water Agency seeks to reduce minimum flows in the Russian River and Dry Creek in conformance with the National Marine Fisheries Service’s *Biological Opinion for Water Supply, Flood Control Operations, and Channel Maintenance, conducted by the U.S. Army Corps of Engineers, the Sonoma County Water Agency, and the Mendocino County Russian River Flood Control and Water Conservation District in the Russian River Watershed*, issued on September 24, 2008.

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:

The petition of the Sonoma County Water Agency (SCWA) seeks to bring permits authorized under D-1610 into conformity with the September 24, 2008 *Biological Opinion for Water Supply, Flood Control Operations, and Channel Maintenance conducted by the U.S. Army Corps of Engineers, the Sonoma County Water Agency, and the Mendocino County Russian River Flood Control and Water Conservation Improvement District in the Russian River watershed* (“Russian River BiOp”). The goal of the Russian River BiOp is to provide habitat conditions for salmon and steelhead, particularly for the juvenile rearing lifestage, that improve anadromous fisheries (Chinook salmon, Coho salmon, and steelhead) in the Russian River downstream of Lake Mendocino and in Dry Creek downstream of Warm Springs Reservoir.

The Russian River BiOp, and the petition as stated, together argue for a tighter operation of releases from Lake Mendocino and Warm Springs Reservoir in order to keep flows below a stated desirable range. Presumably, this desire also cuts the other way: while flows for juvenile rearing of salmonids should not be too high, they equally

should not be too low. As the hydrologic range for acceptable flows is reduced by reducing the top of the range, great care must be taken to avoid a situation where the range of flows occasioned by diversions in the various stream reaches is not pushed too low by episodic increases in diversions. This will be an issue in the Russian River between Coyote Dam and Dry Creek confluence, and in Dry Creek downstream of Warm Springs Reservoir. Whereas, in the past, the effects of riparian or unpermitted diversions in these stream reaches were in part limited by flows higher than those presently proposed, the effects of diversions, and of fluctuations in streamflow caused by them, are likely to be increased under the proposed new flow regime. Of particular concern are thermal impairment, the effects of decreased flows on the water table and connectivity with tributaries, and the potential effects of unscreened diversions at lower flows. Diverters within the watershed will also doubtless be concerned about constraints that may be placed upon them, in terms of potential requirements in the timing or magnitude of flow, or requirements for coordination with other diverters.

In order to evaluate the potential effect of the proposed new flow regimes, a thorough understanding of both the present and reasonably foreseeable impaired and unimpaired hydrology of the affected stream reaches is therefore required. This will be needed in the short term in order to inform an adequate CEQA document and in order to inform a public trust analysis of the proposed changes to the water rights. It will also be necessary to manage the system going forward.

Under Term 18 of WRO 2009-0034-EXEC, Sonoma County Water Agency was asked to “develop and accounting procedure and a method for determining when the Russian River was being supplemented by project water.” SCWA was also required, under Term 15 of the same order, to develop a plan to “prevent waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of water;” specifically called out under sub-term (b) was “identification of Russian River water users who are not subject to SCWA’S authority to impose mandatory conservation measures.” In spite of the expiration of WRO 2009-0034-EXEC, the need for the required procedure and the ongoing identification of Russian River water users appears to us to be no less critical today for the purposes of the present petition and the future water management of the Russian River.

Pending before the Board are also the applications 12919c and 12920b of Mendocino County Russian River Flood Control and Water Conservation Improvement District for up to 6000 afy of combined direct diversion and redirection of stored water from Lake Mendocino, noticed by the Board on July 31, 2008, and protested by CSPA on September 27, 2008. Availability of water to meet this application under a state filing is not possible to evaluate without the thorough understanding of both the present and reasonably foreseeable impaired and unimpaired hydrology of the affected stream reaches contemplated by the present SCWA petition.

The Board is currently considering a rule governing direct diversions in the Russian River watershed for the purposes of frost protection. Some of the infrastructure and cataloguing of diversions in the watershed that might inform the present petition are very possibly already being developed for the frost control process. Of particular note is the fact that the Board is contemplating real time monitoring of stream gauges and of diversions in order to avoid take of endangered salmonids in the Russian River mainstem and tributaries, at least during the frost protection season.

Since the 2002 Biological Opinion for the Potter Valley Project was incorporated into a FERC license amendment in 2004 and implemented, annual exports from the Eel River drainage to Lake Mendocino have been reduced. The availability of water in the Russian River has therefore changed. In addition, D-1610 ties the water year-type designation in the Russian drainage to inflow to Lake Pillsbury, and flows mandated in the permits whose modification is sought under the present petition is tied in part to Lake Pillsbury storage levels. It is certain that conditions that link Russian River flows to inflow and storage in Lake Pillsbury will be

challenged. It is possible, perhaps likely, that flow requirements in the Russian River may in the future be controlled exclusively by variables within the Russian River drainage, excluding consideration of the Eel River hydrology altogether. On this basis alone, a thorough understanding of the unimpaired and impaired hydrology of the Russian River (including the present and reasonably foreseeable effects of exports from the Eel River on the impaired hydrology of the Russian River) is necessary.

Several communities at the lower end of the Russian River depend on the underflow of the river for their water supply. Careful consideration must be given of how the proposed flow changes may affect both water supply and instream conditions (including water quality) downstream of these diversions. Analysis of these cumulative effects, and similar cumulative effects, must be made in the CEQA document that describes re-operation of the Russian River, and management requirements must be incorporated into the permit terms that protect both water quality and instream beneficial uses.

In sum, the Sonoma County Water Agency has requested changes to its permits within the very narrow perspective of the flow amounts that are explicitly affected by the Russian River BiOp. However, these requested changes require equally explicit analysis and possible modification of the related elements of the management of the Russian River that are described above.

Under what conditions may this protest be disregarded and dismissed?

1. SCWA must prepare a CEQA document that comprehensively addresses the management of the Russian River watershed. The CEQA document must include a complete cumulative effects analysis as well as analysis of direct and indirect effects of the proposed action. The cumulative effects analysis must describe the baseline conditions of the watershed, including hydrology, water quality, wastewater discharges and operations, connectivity, and effects on the resource of other actions in the watershed such as gravel mining and agricultural development. The cumulative effects analysis must describe not only the incremental effect of the proposed action, but also how the proposed action will act in combination with other factors and existing and reasonably foreseeable actions to affect the environment, particularly aquatic resources. CSPA reserves the right to state additional protest dismissal terms following evaluation of a certified CEQA document.
2. SCWA must create and make available to resource agencies and to the public a public domain water balance model for the Russian River and Dry Creek watersheds that includes the exports from the Eel River to the Russian River. The model must have the capability of changing inputs and operating requirements on the mainstem Eel River as well as in the Russian River watershed.
3. SCWA must demonstrate that operations under new permit conditions will protect the public trust anadromous fisheries resources of the Russian River watershed by operating within defined parameters that include not only the minimum flows but also other flow conditions that enhance and protect anadromous fish. SCWA must develop an anadromous salmonids management and monitoring plan approved by the SWRCB, CDFG and NMFS, to be incorporated in its permit terms, to achieve conditions that enhance and protect anadromous fish. This plan must include a process for evaluation, every five years, of the efficacy of the new flow regime and overall management of the watershed by SCWA insofar as they affect anadromous salmonids.
4. SCWA must install, as part of its permit terms, a series of gauges that allows public monitoring and analysis of the efficacy of its management of the hydrology of the Russian River and Dry Creek. SCWA must develop a gauging plan that allows this monitoring and analysis; this plan must be approved by SWRCB, CDFG and NMFS. SCWA must post a page on its website that displays existing gauges in the Russian River watershed, plus newly installed gauges, on a real-time basis.

5. SCWA must demonstrate that operations under new permit conditions will protect water quality throughout the Russian River watershed. SCWA must develop a water quality management and monitoring plan, to be approved by SWRCB, CDFG and NMFS and incorporated in its permit terms, to achieve conditions that will protect water quality throughout the watershed.

6. SCWA must agree, as new permanent terms for the affected permits, to the incorporation of Terms 15 and 18 of WRO 2009-0034-EXEC. SCWA should be required to annually update “identification of Russian River water users who are not subject to SCWA’S authority to impose mandatory conservation measures,” and to post daily notification to the public on its website of whether the Russian River is being supplemented by project water.

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

(Personally or by mail)

Date: May 11, 2010

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

cc:

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