

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: 12919C and 12920B**  
**(Petitions for Partial Assignment of State Filings)**

**I, Chris Shutes, FERC Projects Director, California Sportfishing Protection Alliance, 1608 Francisco St., Berkeley, CA 94703.** (Name and address of Protestant)

have read carefully a notice relative to the petitions for new partial assignment of State Filings under the above referenced **APPLICATIONS of Mendocino County Russian River Flood Control and Water Conservation Improvement District (Mendocino District)**, to appropriate water from **Lake Mendocino; Source East Branch Russian River, tributary to Russian River, tributary to Pacific Ocean.**

(Name of Source)

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
- (4) have an adverse environmental impact** **x**

**State Facts, which support the foregoing allegations:**

The applications proposed seek to assert State Filings in preference to existing junior diverters; with this, we have no objection. However, the applications purport to find an additional 6,000 af of firm yield in Lake Mendocino based on the paper subtraction of unappropriated paper water which Sonoma interests had the right to apply for in the past, but which they failed to pursue or appropriate. The contention that water is available because an equivalent amount of water thought to have been available in 1974 was not appropriated is highly problematic.

The issue presented in this case goes to the heart of the problem presented by heretofore unapplied-for state filings: there is more water allotted under the inchoate state filing reservations than there is wet water remaining in many river systems to accommodate them. Failing analysis and adjudication by the Board, the state filing system threatens to become a back door means to pressure or deplete instream requirements for fisheries and other public trust needs

The Russian River was declared fully appropriated in Water Right Order 98-08. In 2007, mandatory water rationing in the Russian River system was ordered by the Board (see WR Order 2007-0015-DWR). In addition, any supposed firm yield of Lake Mendocino has been altered by the 2004 FERC-ordered reduction in transferred water from the Eel River System through Pacific Gas & Electric's Potter Valley Project, occasioned by the increase in required minimum instream flows in the Eel River below Cape Horn Dam.

WRO 86-09, in modifying D1610, explicitly contemplated exercise by the Board of its reserved jurisdiction should instream flow requirements in the Eel River be changed. (See Order, point 2, page 17). In addition, exercise of reserved jurisdiction was contemplated should additional fishery studies be completed, or should unforeseen adverse impacts occur to the fishery in the Russian River (Ibid.). While in WRO 86-09, requests for modification of D1610 were denied by the Board based on the fact that a mandate for increased Eel River Flows was speculative, it has today come to pass, as has a dramatic decline in the anadromous salmonids in the Russian River system.

It is not in the public interest, and it is not protective of the public trust, to simply grant the proposed applications without re-opening D1610 (as modified by WRO 86-09) in order to evaluate in contemporary conditions the state of the fisheries in the Russian River, and the hydrologic impacts both of the proposed new diversions and of the operation of the system as it exists today.

It is not enough to simply deprive, on a zero sum basis, junior diverters of water heretofore appropriated by them, as though this might make the river and instream beneficial uses whole. It was already acknowledged in 1986, in D1610, that the impacts to instream uses were significant. The practical effect of any new water permitted under the present applications will further reduce instream flow at times when in the past “surplus” flow was present. Further, instream flow may be reduced by reducing the amount of water stored in Lake Mendocino between October 1 and December 31, an amount of storage which figures into the formula for flow during that period. Finally, changes are being proposed by the National Marine Fisheries Service in its forthcoming Biological Opinion for listed species in the Russian River watershed, as described by a representative of NMFS at the Board’s workshop in Santa Rosa on August 6, 2008. On the basis of that Biological Opinion alone, NMFS will be asking the Board to re-open, in part, D1610.

The Board has the benefit, more than twenty years after D1610, not only of seeing how poorly fishery resources in both the Russian River and Eel River systems have fared, but also of having new, readily accessible public domain water balance models which its staff can deploy to conduct a modern evaluation of operations and diversions in the combined systems.

### **Under what conditions may this protest be disregarded and dismissed?**

The issue that is explicitly at the center of these petitions is the firm yield of Lake Mendocino. In order to rule on these petitions, the Board must thoroughly consider all aspects of the circumstances which affect said firm yield. 1) The Board must re-open D1610 and re-analyze the instream needs of both the Eel and Russian Rivers for fisheries and other public trust values. 2) Board staff must develop and make publicly available a public domain water balance model for the Russian River system, including diversions for the Eel River to the Russian River watershed through PG&E’s Potter Valley Project. This water balance model must account for a) the effects of reduced diversion from the Eel River on the Russian River’s instream resources; b) Changes to the hydrologic record of inflow to Lake Mendocino and the Russian River in general as affected by the period 1986 – present, and; c) requirements mandated by NMFS’s forthcoming Biological Opinion for the Russian River watershed. 3) Based on this analysis and modeling efforts, the Board must prescribe a flow regime for the Russian and Eel River watersheds that is protective of the salmonids and other public trust resources in both stream systems, and reduce the amount of permitted rights in the Russian River system as needed in order to accommodate both instream requirements and the presently applied-for state filings, to the degree that the latter are senior to other permits and licenses in the Russian River system. 4) The Board must analyze and parse out how much of the firm yield of Lake Mendocino is made up of water imported from the Eel River watershed, and rule on how much if any water that is imported can be applied for under the applicable state filings.

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

Date September 27, 2008 Chris Shutes, FERC Projects Director,  
California Sportfishing Protection Alliance

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Protestant(s) Authorized Representative sign here

***Protests must be filed within the time allowed by the SWRCB as stated in the notice relative to the change or such further time as may be allowed.***

Copy to:

Barbara Spazek  
Mendocino County Russian River Flood Control &  
Water Conservation Improvement District  
151 Laws Ave, Suite D  
Ukiah, CA 95482