

## **PROTEST – (Petitions)**

**BASED ON ENVIRONMENTAL OR PUBLIC INTEREST CONSIDERATIONS**  
Protests based on Injury to Prior Water Rights should be completed on other side of form

**APPLICATION** 12622 **PERMIT** 11360 **LICENSE** \_\_\_\_\_

We, California Water Impact Network and AquAlliance of (C-WIN) P.O. Box 148, Quincy, CA 95971 and (AquAlliance) P.O. Box 4024, Chico, CA 95927 have read carefully a notice relative to a petition for  change or  extension of time under **APPLICATION 12622 of the City of Sacramento** to appropriate water from nine points along Rubicon, American, and Sacramento River systems to eight State Water Contractor agencies (the Dudley Ridge Water District, Kern County Water Agency, Napa County Flood Control and Water Conservation District, the Metropolitan Water District of Southern California, Antelope Valley-East Kern Water Agency, Oak Flat Water District, Palmdale Water District, and the San Bernardino Valley Municipal Water District). It is our understanding this proposed transfer assumes that the petitioner will substitute ground water for surface water. Sacramento Suburban Water District, rather than receive 4,377 acre-feet in 2010 from the City of Sacramento as a “firm capacity” allocation from the City’s diversion from the American River, would instead pump groundwater to supply its customers. The City’s water would instead be rediverted at State Water Project pumping plants in the Delta.

It is desired to protest against the approval thereof because to the best of our information and belief the proposed change/extension will:

1. not be within the State Water Resources Control Board’s jurisdiction
2. not best serve the public interest
3. be contrary to law
4. have an adverse environmental impact

State facts, which support the foregoing allegations:

C-WIN and AquAlliance protest the City of Sacramento's petition for change of place of use for transfer under Water Code Sections 1330 (actually protesting "an application") and 1726 (f) ("commenting" which must be considered by SWB in deciding the disposition of the short-term transfer change of use petition). Our organizations protest this transfer because we believe it does not serve the public interest, is contrary to the California Water and Public Resources Codes, and would have adverse environmental impacts.

- 1) Transfer is not in the public interest: The City of Sacramento and Sacramento Suburban Water District must demonstrate, not merely assert, that the transfer of surface water will have little to no impact on other parties within or downstream of the District.

The petition fails to disclose probable third party impacts in the area of origin (The City of Sacramento and Sacramento Suburban Water District and its environs) and the area(s) where delivery occurs. Even the California Department of Water Resources acknowledges that all

transfers have the potential to impact third parties (see Unresolved Issues discussion at <http://www.swpao.water.ca.gov/transfers/index.cfm#Unresolved%20Issues>).

Isotopic groundwater data available for other regions should be available for the Sacramento Valley. Such data would be crucial for all concerned to understand potential impacts from the proposed Bureau of Reclamation's 2010-2011 Water Transfer Program. For example, the EA states, "The ... area that could be affected by the proposed action [of water transfers] includes only the 'North Area' bounded on the north and east by the Sacramento County line, by the Sacramento River on the west, and by the American River on the south." (USBR's 2010 EA at p. 34). If this is the area in Sacramento County that is identified as most vulnerable to groundwater impacts, yet two major rivers surround it (the Sacramento and American rivers), shouldn't California Department of Water Resources, the City of Sacramento, and Sacramento Suburban Water District understand the hydrologic relationship between the groundwater basin and the rivers? It is well known that the Sacramento River is already a losing river south of Princeton.

C-WIN and AquAlliance allege that groundwater substitution for surface water transferred by the City of Sacramento and Sacramento Suburban Water District will not improve, and could worsen, this situation. The City of Sacramento proposes to transfer surface water into the state water market and substitute 4,377 acre-feet of groundwater, but the *Sacramento County Water Agency Water Management Plan* indicates that intensive use of this groundwater basin has resulted in a general lowering of groundwater elevations that will require extensive conservation measures to remediate. The Sacramento County Water Agency has devised a plan to help lead the city to a sustainable groundwater use to avoid problems associated with unrestrained overuse. The most reliable strategy is to reduce demand. Integrating the City's water supply into the state water supply would obviously increase demand and make the SCWA goals impossible to achieve. Instead of just the existing supplies of 4,377 acre-feet provided by Sacramento Suburban Water District to its customers with existing surface supplies, the total pressure of demand on water supplies from Sacramento Suburban through the transfer becomes 12,108 acre-feet (obtained by adding the Water District's total 2010 supplies (7,731 acre-feet on page 5, Table 1, of the petition, to the total amount of surface water foregone, 4,377 acre-feet, Table 2).

Sacramento Groundwater Authority's map attached to its letter endorsing the proposed transfer by Sacramento Suburban Water District contains 11 long-term well hydrographs. Of these, five hydrographs show clear long-term declines which the petitioners (City of Sacramento and Sacramento Suburban Water District) do not acknowledge or explain. Two of these hydrographs show significant long-term declines in groundwater elevations from 40 to 70 feet over several decades. Other hydrographs appear to indicate declines in groundwater elevations of about 10 feet over several decades. While the Groundwater Authority endorses this transfer, neither the Authority nor the petitioners show how the substantial historical overdraft in these wells (Nos. SWP-276, SWP-270, SWP-232, SWP-229, and SWP-240) would be affected by proposed transfer, and merely assert that since last year's 2009 Drought Water Bank transfer (on which, as of this writing, the City and the District have failed to report to the State Water Board as required by the State Water Board's Water Rights Order 2009-0054-DWR, condition 7).

2) Transfer is contrary to law.

- a. California Water Code Section 1725. Transfers by The City of Sacramento and Sacramento Suburban Water District with the same terms, timing of release, transfer amounts, additional purposes of use, and proposed new users have occurred serially since 2008, as shown in the table below.

Cumulating Petitions for Temporary Changes

Year of Petition	Application Number	Applicant/ Water Right Holder	Average Diversion Rate of Transfer (cfs)	Changed Point of Rediversion	Changed Place of Use	Changed Purpose of Use	Proposed New User(s)	Transfer Amount	Term of Transfer	Timing of Releases
2009	12622	Sacramento Suburban Water District and City of Sacramento	Set by agreement between City of Sacramento and DWR, subject to "Hodge" flow criteria for American River	Banks PP and Barker Slough PP, Jones PP, Contra Costa Canal	Service areas of the Central Valley Project( Application 5626) and State Water Project (Application 5630)	Addition of irrigation	Water users within the places of use of the CVP and SWP, facilitated through the Drought Water Bank.	up to 2,902 AF	August 17, 2009 to September 30, 2009	August 17, 2009 to September 30, 2009
2010	12622	Sacramento Suburban Water District and City of Sacramento	up to 24 cfs, July 1 through September 30, 2010	Banks PP and Barker Slough PP	Service area of the State Water Project (Application 5630)	Addition of irrigation	Dudley Ridge WD, Kern County Water Agency, Napa County Flood Control & WCD; MWDSC; San Bernardino Valley MWD; Antelope Valley East Kern WA; Palmdale WD; Oak Flat WD	up to 4,377 AF	July 1, 2010 - June 30, 2011	July 1 to September 30, 2010

C-WIN and AquAlliance believe that the proposed 2010 water transfer by the City of Sacramento and Sacramento Suburban Water District is evidence of a long-term water transfer to the State Water Project that masquerades as a series of short-term, temporary transfers. Water Code Section 1735 states: “The board may consider a petition for a long-term transfer of water or water rights involving a change of point of diversion, place of use, or purpose of use. A long-term transfer shall be for any period in excess of one year.” The sequence of transfers undertaken by the City of Sacramento and Sacramento Suburban Water District shown above indicates that by approving a temporary change petition from the City of Sacramento in 2010, the State Water Board would fail to recognize that the City is actually engaging in a long-term transfer that should be the subject of a petition under Section 1735, in violation of the intent of the short-term transfer provision of Water Code Section 1725. This is a reasonable presumption because currently the State Water Project’s storage capacity, despite a wet winter in 2010, remains well below capacity because of other priorities for flows from the Feather River. Department of Water Resources meteorologists and planners have stated publicly that it will take at least another year or two for Lake Oroville to fill from winter snowmelt and runoff. Petitioners should acknowledge these existing conditions as context for their proposed transfer. Petitioners do acknowledge that they proposed up to 6,000 acre-feet and actually transferred up to 2,902 acre-feet to the 2009 Drought Water Bank. These transfers, while nominally legal, add up to a consistent pattern of nearly identical transfers from the same seller’s facilities to the same changed points of rediversion (State Water Project pumping and conveyance facilities) to nearly identical customers. The proposed 2010 transfer includes eight state water contractors that are identified as transfer recipients in 2009, and four (Metropolitan, Kern County Water Agency, Napa County Flood Control and Water Conservation District, and San Bernardino Valley Municipal Water District) appear among the 2009 Drought Water Bank pool of transfer recipients a year ago. (As noted earlier, the City and Sacramento

Suburban Water District have yet to submit their transfer completion report required under condition 7 of Water Rights Order 2009-0054-DWR, so it is not yet publicly known as of this writing which state water contractors actually received the City of Sacramento's water.) Finally, the CEQA exemption for the 2009 Drought Water Bank based on a declaration of drought emergency by the Governor was disallowed by Alameda County Superior Court in March 2010, and the remedy includes a requirement that DWR prepare an environmental review of the 2009 Drought Water Bank transfers. We are also aware that DWR and the US Bureau of Reclamation plan a "water transfer program" for 2010 through 2011 (and which is modeled on the 2009 Drought Water Bank which was successfully challenged), so it is a reasonable presumption that the City of Sacramento and Sacramento Suburban Water District are likely to prepare another short-term transfer petition to provide water to this water transfer program. We urge the State Water Board to reject the short-term water transfer petition and advise the petitioner to file a long-term transfer petition instead.

b. The proposed transfer would be contrary to the California Environmental Quality Act.

Following on the reasoning with respect to the Water Code, C-WIN and AquAlliance allege that the proposed short-term transfer by the City of Sacramento and Sacramento Suburban Water District to the State Water Project contractors would represent another increment of a "project" that is exempted from CEQA improperly. We believe that, unlike in the case of *Sierra Club v. The West Side Irrigation District* (2005), the current transfer should be treated as a long-term transfer (one that represents a transfer of water recurring over a period greater than one year), and is subject to CEQA review. The City of Sacramento's proposed and actual transfers in 2009 and 2010 constitute a single project put forward by a single independent agency; environmental review has been evaded because these transfers were filed incrementally as temporary short-term petitions; only a single water right (application 12622) is involved; each incremental petition would be for similar "up to" amounts to be transferred (2,900 and 4,377 acre-feet); and the petitions have essentially the same terms, identified in the table above. In addition, with vacation of the CEQA exemption on the 2009 Drought Water Bank, there really is no programmatic coverage under CEQA for transfers like this. Cumulative effects of this and other transfers have been poorly handled or not examined at all. We believe this would represent an abuse of the State Water Board's discretion to approve this project as a short-term temporary transfer, and would violate the California Environmental Quality Act, which requires that projects be treated as "the whole of an action," and that the environmental effects of the action should be fully disclosed to the public prior to its conduct.

Individual, if serial, transfers, such as the City of Sacramento and Sacramento Suburban Water District's, confirms for C-WIN and AquAlliance the desperate need for the California Department of Water Resources to collaborate with the State Water Resources Control Board (as the steward of California's public trust resources) to undertake a systematic programmatic environmental review under CEQA of water transfer programs that would transfer water from Sacramento Valley sources across the Delta to San Joaquin Valley and southern California users. This is necessary to gain a greater understanding of the "whole" of the actions involved in water transfers and their incremental, cumulative, and perhaps growth-inducing effects.

3) The proposed transfer would have adverse environmental impacts.

- a. The petitioner requests approval for a year-long transfer when fisheries problems in the Sacramento River continue year-round. Water temperature, flow timing (particularly with respect to attraction flows), and water level issues have been identified by the petitioner and with two previous years of nearly identical transfer activity, these fishery issues need CEQA review under the aegis of a long-term transfer petition.
- b. Cumulative effects of lost Delta outflows. The City of Sacramento would add Banks Pumping Plant and Barker Slough Pumping Plant to its points of redirection under this petition. C-WIN and AquAlliance protest these proposed redirection points because the transfer generates inflows to the Delta, but no net outflows to Suisun Bay, Suisun Marsh, and San Francisco Bay. Instead, the transfer is "accounted for" as water that proceeds through the Delta Cross Channel, and contributes to the reverse flows in Old and Middle River that contribute to fish entrainment at Banks Pumping Plant, before being exported to the recipients of the water south of the Delta. However small a contribution these transfer water flows make on a percentage basis to Delta inflow, they are nonetheless cumulatively subtracted from Delta outflows. Loss of Delta outflow means that the low salinity zone in the Delta is smaller than it would otherwise be, and therefore critical habitat for estuarine species, including striped bass young of the year and Delta smelt, may be adversely affected by increased density-dependence relationships.

These and other cumulative effects must be disclosed and analyzed on individual bases and as part of a programmatic environmental review under the California Environmental Quality Act to ensure all significant environmental effects of cumulating are taken into account.

- c. There may be habitat conservation plans and natural community conservation plans in the vicinity of transfer flows that could be affected by the proposed transfer.

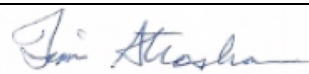
4) Conclusion

C-WIN and AquAlliance urge the State Water Board that the requested transfer should be denied as a temporary transfer under Section 1725 of the Water Code. As a long-term transfer under Section 1735 of the Water Code, the proposed transfer should be analyzed under CEQA. The CEQA analysis should evaluate cumulative effects, not merely incremental effects.

Under what conditions may this protest be disregarded and dismissed? Not known at this time.

A true copy of this protest has been served upon the petitioner The City of Sacramento and Sacramento Suburban Water District, c/o Joshua Horowitz, Barkiewicz, Kronick, & Shanahan, Sacramento, CA 95816-4907

Date 11 JUNE 2010



Protestant(s) or Authorized Representative sign here

Date 11 JUNE 2010



Protestant(s) or 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.***

**Proof of Service**

**I hereby certify that on this day, June 11, 2010, I, Tim Stroshane, have placed in first class mail at Albany, California, a true copy of this comment letter mailed to:**

**Sacramento Suburban Water District  
c/o Joshua Horowitz  
Barkiewicz, Kronick, & Shanahan  
1011 22<sup>nd</sup> Street  
Sacramento, CA 95816-4907**

**AND**

**City of Sacramento  
Joe Robinson, Sr., Deputy City Attorney  
City Attorney's Office  
915 I Street, 4<sup>th</sup> Floor  
Sacramento, CA 95814**



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**Tim Stroshane**