



California Sportfishing Protection Alliance

"An Advocate for Fisheries, Habitat and Water Quality"

Chris Shutes

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June 2, 2010

Ms. Victoria Whitney, Deputy Director
Division of Water Rights
State Water Resources Control Board
P.O. Box 2000
Sacramento, CA 95812-2000
(via e-mail and surface mail)

Re: Protest/Comments on Petition for Temporary Change under License 11118
(Application 14804) of South Sutter Water District

Dear Ms. Whitney:

The California Sportfishing Protection Alliance (CSPA) has reviewed the petition for a proposed Temporary Change under License 11118, Application 14804 of South Sutter Water District, to transfer 10,000 acre-feet of water to eight State Water Contractor Agencies between July 1, 2010 and June 30, 2011. The petition was noticed on April 30, 2010. We offer the following comments.

The proposed temporary change is not temporary.

Water Code Section 1728 defines a temporary change: "For the purposes of this article, a temporary change means any change of point of diversion, place of use, or purpose of use involving a transfer or exchange of water or water rights for a period of one year or less." Water Code Section 1735 says "A long-term transfer shall be for any period in excess of one year." The Attachment to Environmental Information says that SSWD engaged in "similar transfers in 2008 and 2009" (p. 1), and on page 2 that many of the submitted materials for the present transfer were submitted in 2008 and 2009. The amount of the transfer (10,000 af) in each of the previous two years was the same as the amount proposed for 2010. The eight proposed recipients of the water in 2010 are the same as those in 2008, with the exception that Oak Flat Water District appears in 2010 in place of Tulare in the 2008 petition. The 2009 petition designated the recipient as the Drought Water Bank, without specifying the end users, but Kern County Water Agency and Metropolitan were known participants in the 2009 Drought Water Bank.

This is thus the third consecutive year that South Sutter has petitioned for water transfer to many if not most of the same recipients. By the plain meaning of Water Code Section

1728, this petition should not be considered as a temporary transfer because it contemplates a third year of the same action. It should be considered a long-term transfer under Section 1735 of the Water Code.

Unlike changes, including transfers, under Water Code Section 1728, transfers under Water Code Section 1735 are not exempt from CEQA analysis under the Water Code Section 1729 exemption. The proposed change should therefore be analyzed under CEQA.

Falling under the requirement for CEQA analysis, the rules governing analysis of cumulative effects of the proposed long-term transfer should also apply. This is in notable distinction from Water Code Section 1727(e), which limits consideration of effects to the incremental effect of a temporary transfer alone, as opposed to the more comprehensive burden of the cumulative effects analysis under CEQA, which requires analysis of a proposed project in combination with other known or reasonably foreseeable actions that affect the environment.

The statutory limitation under Water Code Section 1727(d), which does not allow consideration of the ongoing effects to the public trust under the water right for which a temporary change is sought, also does not apply to long-term transfers. In addition to a CEQA analysis, a public trust analysis of License 11118, Application 14804 should therefore be conducted by the State Board.

The petition lacks specificity in discussing effects on groundwater.

Petitions put forward by Sacramento Suburban Water District (for Permit 13858, Application 18087, joint transfer from PCWA) in 2009 and (for Permit 11360, Application 12622, joint transfer from City of Sacramento) include comment letters from the Sacramento Groundwater Authority documenting the level of wells throughout the groundwater basin underlying Sac Suburban's service area and beyond, and provide overall documentation of the condition of the affected area's groundwater. South Sutter, by contrast, relies on the blanket statements that water deliveries within the district will be "within their historical range (petition, cover letter, page 1) and outflow from the district will be "at their historical levels" (petition, attachment section 2a, 2b and 2c). "In addition, monitoring wells located with the District indicate, in almost every year, that the groundwater basin is recharged during the subsequent winter period" (Attachment to Environmental Information, page 2).

The State Board should require greater specificity of the effects of the proposed transfer, especially on groundwater in the present year, rather than the general condition of groundwater. It should not accept an unquantified reliance on terms as vague as "historical levels" or "historic range." There is no evidence in the record of the effects of this proposed transfer, or the previous two years' transfers in dry water conditions, on groundwater in the basin overlain by the South Sutter Water District.

CSPA is in possession of a Powerpoint presentation by Wood Rodgers (“ Sutter County Groundwater Management Plan, Planning Advisory Group , Meeting No. 3,” dated October 17, 2008) which appears to suggest in Slides 22 and 43 that there is significant groundwater overdraft in part of South Sutter Water District’s service area. Since South Sutter’s 2010 petition suggests that groundwater in the district is generally recharged annually, this is further cause for the Board to request more specific information from SSWD regarding groundwater (and its connection to surface water) in its service area. Such information would be appropriately disclosed in a CEQA document.

The petition unreasonably asks that it approve the transfer for an entire year, in spite of fisheries concerns during most months of the year that are explicitly raised by petitioner.

On page 5 of the Attachment to the Petition, in response to sections 5b, 5c and 5d, petitioner describes the absence of suitable habitats in the lower Bear River for anadromous salmonids and sturgeon, and proposes to convey transferred water in the Bear River in July, August and September, so that it does not attract anadromous fish into the river’s inadequate habitat. South Sutter explains that few anadromous fish are present in the Feather River downstream of confluence with the Bear River during the July through September period. However, on page 1 of the Attachment to the Petition, under Period of Transfer, South Sutter asks that the transfer be approved for one year, from July 1, 2010 through June 30, 2011. Given the fisheries concerns documented by petitioner itself, any transfer that is approved should be limited to the months of July, August and September.

A CEQA document and a public trust analysis, as discussed above, should also consider the degraded habitat in the lower Bear River, how petitioner’s facilities contribute to that degradation, and the appropriate mitigation or mitigations for that degraded condition that South Sutter Water District should be responsible for implementing.

Non-response by the Department of Fish and Game does not necessarily denote absence of fisheries impacts.

In response to several comment letters regarding water transfers that CSPA filed in 2009, the State Board included a default response that read: “DFG was provided a copy of the subject petition and did not submit comments or concerns regarding the temporary change” (see, e.g., Order WR 2009-0040-DWR, page 6). The decision by DFG not to comment on transfers in 2009 reflected a policy decision and perhaps a workload decision made by DFG management, and likely its superiors in Resources and the Governor’s office. The State Board should not draw conclusions of substance based on failure by DFG to engage procedurally, either in 2009 or, should it come to pass, in 2010. The CEQA and public trust analyses that are required for South Sutter’s proposed transfer due to its long-term character will adequately disclose and analyze impacts to fisheries, including cumulative impacts in the Bay-Delta. CSPA reminds the Board that DFG submitted substantial written and oral testimony in the Delta Flow Proceeding conducted by the Board in January through March, 2010 regarding the dire condition of

Bay-Delta fisheries, and also submitted extensive recommendations for greatly increased Delta outflow based on an equitable allocation of responsibility. The CEQA and public trust analyses for South Sutter's proposed transfer should consider cumulative effects of the proposed project in light of the recommendations of DFG and other resource agencies and non-governmental organizations, including CSPA, in the Delta Flow Proceeding.

Conclusion

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, and should provide specificity regarding Sutter County groundwater.

As part of consideration of the long-term transfer, the Board should also conduct a public trust analysis of the petitioner's license.

Thank you for the opportunity to comment on the Petition for Temporary Change under License 11118 (Application 14804) of South Sutter Water District.

Respectfully submitted,



Chris Shutes
Water Rights Advocate
California Sportfishing Protection Alliance

Certificate of Service

I hereby certify that on this day, June 2, 2010, I, Chris Shutes, have placed in first class mail at Berkeley, California, a true copy of this comment letter mailed to:

South Sutter Water District
Marc Van Camp
MBK Engineers
1771 Tribute Rd., Suite A
Sacramento, CA 95815


Chris Shutes

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

APPLICATION: 14804 LICENSE: 11118

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. (Name and address of Protestant)

have read carefully a petition for temporary transfer of water under Section 1725 of the Water Code, of **South Sutter Water District**, under application 14804 for license 11118, noticed on April 30, 2010, to transfer water from Camp Far West Reservoir and Camp Far West Diversion 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 Bernadino Valley Municipal Water District).

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:

Please see attached comment letter for supporting facts and discussion.

Under what conditions may this protest be disregarded and dismissed? 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, and a public trust analysis of the petitioner's license should be conducted by the Board.

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

Date: June 2, 2010.

Chris Shutes, Water Rights Advocate,
Bill Jennings, Executive Director
Michael Jackson
California Sportfishing Protection Alliance



Protestant(s) Authorized Representative sign here

Certificate of Service

I hereby certify that on this day, June 2, 2010. I, Chris Shutes, have placed in first class mail at Berkeley, California, a true copy of this protest mailed to:

South Sutter Water District
Marc Van Camp
MBK Engineers
1771 Tribute Rd., Suite A
Sacramento, CA 95815



Chris Shutes