

State of California

Before the State Water Resources Control Board

California Water Service District, Permittee

Water Right Permit 8816

Bear Gulch Creek Tributary to San Francisquito Creek Watershed

San Mateo County

Formal Protest by the California Salmon and Steelhead Association

The California Salmon and Steelhead Association hereby protest the Petition for Extension of Time under Water Right Permit 8816. The deadline date for filing formal protests is March 9, 2009.

The California Salmon and Steelhead Association are part owners of the public trust water and steelhead fishery of the San Francisquito Creek watershed. The agent for the California Salmon and Steelhead Association is Bob Baiocchi at e-mail address: rbaiocchi@gotsky.com

The Division of Water Rights notice did not include the name and e-mail address of the general manager of the California Water Service District. Consequently forward this protect to the general manager.

California Water Service District, Permittee, has filed a Petition for an Extension of Time. The District has not put all of the water permitted to full beneficial use.

Under Permit 8816, the amount of direct diversion is 11 cfs, and 1,380 acre-feet by storage with an annual limit of 5,740 acre-feet. The source of the water is Bear Gulch Creek Tributary to San Francisquito Creek. The season of direct diversion and storage is January 1 through December 31. The purpose of use is for municipal purposes. The place of use is: Menlo Park; Atherton, Woodside and vicinity.

San Francisquito Creek sustains threatened steelhead species and their habitat. Threatened steelhead species and their habitat is protected by the federal Endangered Species Act. The federal regulatory agencies responsible for protecting threatened steelhead species and their habitat is the US NOAA Fisheries.

Bear Gulch may sustain threatened steelhead species and their habitat.

There may exist California Red Legged Frogs and their habitat in the San Francisquito Creek watershed.

Permit 8816 may not have specific terms and conditions to protect threatened steelhead species from being harmed and injured in San Francisquito Creek, and also Bear Gulch. Without conditions to protect threatened steelhead species, the diversion of water would be the unreasonable use and unreasonable method of use and would violate Article X, Section 2 of the California Constitution.

This formal protest is based on the Federal Endangered Species Act; California Constitution, Article X, Section 2; Public Trust Doctrine; California Water Code; California Fish and Game Code; Section 1241 of the California Water Code; and other applicable statutes.

Dismissal Terms and Conditions

This protest will be dismissed provided the California Water Service District meets the following conditions:

- 1. The District must consult with the US NOAA Fisheries and must receive a recommendation that prevents harm and injury to threatened steelhead species and also conditions to protect their habitat (all life stages) affected by the direct diversion and storage of water.**
- 2. The District must consult with the California Department of Fish and Game and must receive a recommendation that prevents harm and injury to threatened steelhead species and also conditions to protect their habitat (all life stages) affected by the direct diversion and storage of water.**
- 3. The District must consult with the Regional Water Quality Control Board to determine whether the direct diversion and storage of water has affected cold water for cold water species such as steelhead trout below the point of storage.**
- 4. Water Right Permit 8816 must be amended to include terms and conditions that protect threatened steelhead species and their habitat in San Francisquito Creek, and also Bear Gulch.**
- 5. The Petition must be deny until threatened steelhead species are provided with specific protection measures in Water Right Permit 8816.**

Respectfully Submitted

**Bob Baiocchi
Water Rights and Fisheries Consultant
California Salmon and Steelhead Association
E-Mail Address: rbaocchi@gotsky.com**

Dated: February 26, 2009

Service List

**Mr. Antonio Barrales, Representative
Division of Water Rights
State Water Resources Control Board**

**Regional Director Rod McInnus
US NOAA Fisheries
Long Beach, California**

**Mr. Russ Strach
Sacramento Office
US NOAA Fisheries**

**Regional Manager Chuck Armor
California Department of Fish and Game**

**Director Donald Koch
California Department of Fish and Game**

**Ms. Lennie Roberts
Committee for Green Foothills**

**Ms. Anie Thompson
Program Director
San Francisquito Water Project**

Interested Parties (bcc)

