

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:12842 PERMIT: 10477**

**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 the May 20, 2009 notice relative to the petition for change in place of use, distribution of storage, modification of permit terms and to the simultaneously submitted petition for an extension of time of the **North San Joaquin Water Conservation District**, under application 12842 for permit 10477.

Summary of permit and proposed changes are as follows:

Source	Mokelumne River tributary to San Joaquin River
Points of Diversion (POD) and Rediversion (PORD)	<u>Present:</u> <i>POD</i> 1) Camanche Reservoir within SE <sup>1</sup> / <sub>4</sub> of SE <sup>1</sup> / <sub>4</sub> of Section 6, T4N, R9E, MDB&M <i>POD/PORD</i> 2) NE <sup>1</sup> / <sub>4</sub> of SE <sup>1</sup> / <sub>4</sub> of Section 26, T4N, R7E, MDB&M 3) NW <sup>1</sup> / <sub>4</sub> of SW <sup>1</sup> / <sub>4</sub> of Section 35, T4N, R7E, MDB&M 4) SE <sup>1</sup> / <sub>4</sub> of NW <sup>1</sup> / <sub>4</sub> of Section 33, T4N, R7E, MDB&M <u>Proposed change:</u> <i>Addition of the following PODs/PORDs</i> 5) NE <sup>1</sup> / <sub>4</sub> of NW <sup>1</sup> / <sub>4</sub> of Section 12, T4N, R8E, MDB&M 6) SW <sup>1</sup> / <sub>4</sub> of NW <sup>1</sup> / <sub>4</sub> of Section 12, T4N, R8E, MDB&M 7) SW <sup>1</sup> / <sub>4</sub> of NW <sup>1</sup> / <sub>4</sub> of Section 35, T4N, R6E, MDB&M
Amount	<u>Present:</u> <i>Direct Diversion:</i> Combined total of 80 cubic foot per second (cfs) from all points of diversion 40 cfs maximum from any one point of diversion <i>Storage:</i> Combined total of 20,000 acre-feet annually (afa) to Camanche Reservoir and underground storage <i>Diversion to underground storage:</i> Maximum diversion rate of 10 cfs <i>Combined Diversion Limitations:</i> Total amount to be taken from the Mokelumne River shall not exceed 20,000 afa <u>Proposed change:</u> Modify diversion rate to underground storage to 10 cfs at each of POD/PORDs 2 through 7

Season of Diversion	December 1 through July 1 of the succeeding year
Purpose of Use	Recreational, Domestic, Municipal, Industrial, and Irrigation Underground storage with subsequent application to irrigation, water quality, and fish and wildlife preservation and enhancement
Place of Use	<u>Present:</u> Recreational use within Camanche Reservoir Domestic, Municipal, Industrial and Irrigation within 45,000 net acres within gross area of 52,000 acres being within the service area of the North San Joaquin Water Conservation District, including T3N, R6-8E, and T4N, R6-8E, MDB&M <u>Proposed Change:</u> Modify Domestic, Municipal, Industrial and Irrigation uses to include the collective boundaries of North San Joaquin Water Conservation District, Stockton East Water District, and Central San Joaquin Water Conservation District, and additional areas within the spheres of influence of the City of Stockton and City of Lodi, as shown on the map accompanying the petition and on file with the Division

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:**

Petitioner proposes to take a surface water right to up to 20,000 afy for water that is presently stored, depending on storage availability, in East Bay Municipal Utilities District's (EBMUD) Camanche Reservoir, and, less 1000 afy for agreed-upon instream resources, store the majority of that allocation underground. Petitioner states that its average annual use of water under this permit has been 3000 afy. Thus, an occasional removal of water from the Mokelumne River surface system will be increased in volume and become annual, on a permanent basis.

Petitioner states that infrastructure for use of surface water has not been built because of a combination of cost and lack of reliable supply to justify the cost. Instead, petitioner proposes to use federal money to build infrastructure to allow percolation of water under permit 10477 into the ground under eastern San Joaquin County. Petitioner has failed to exercise diligence under the Water Code, but proposes a new scheme to preserve petitioner's priority.

Petitioner states that groundwater in San Joaquin County is cumulatively over-drafted by 2,000,000 acre-feet or more, and is annually over-drafted by an average of 200,000 acre-feet.

Petitioner proposes no limitation on groundwater pumping in its service area, although it notes that it has authorized, but not yet imposed, a charge of from \$1.00 to \$5.00 per irrigated acre for pumping.

Petitioner's own engineer states that the project contemplated by the present petition can only address a small portion of east San Joaquin County's groundwater overdraft, and presents a formula which indicates the need for the requested annual 16,000 acre feet of infusion to be supplemented by 368,000 acre-feet in wet years just to maintain the County's groundwater status quo. Much more would be needed to accommodate growth. Presumably, more still would be needed to recharge to aquifer to begin to correct the longstanding, cumulative overdraft.

Under present conditions, according to a recent Programmatic Environmental Impact Report for EBMUD's proposed Water Supply Master Plan 2040, "channel losses" in the Mokelumne River, largely between Camanche Dam and Lake Lodi, run between about 56,000 and 120,000 afy. Thus, Mokelumne River surface water is already either recharging that amount into San Joaquin groundwater, or else is providing water that is being pumped out of the aquifer that is immediately connected with the Mokelumne River (PEIR, p. 4.2.A-4), for use that is not otherwise accounted for.

There is already too little water released from Camanche Reservoir into the Mokelumne River. The Joint Settlement Agreement (JSA) among EBMUD, the U.S. Fish and Wildlife Service, and the California Department of Fish and Game, which governs flows in the Mokelumne River downstream of Camanche Dam, is inadequate to protect the river's fishery resources. Flows in the lower Mokelumne as mandated by the JSA, which can be as low as 15 to 20 cfs below Woodbridge in September and October, are frequently inadequate to even maintain connectivity in the Mokelumne downstream of Woodbridge. In order to maintain connectivity, additional water below Woodbridge must be released, and is sometimes voluntarily released by EBMUD at present. Further, upmigrating salmon are frequently trapped below the Woodbridge fish ladder in the early fall, thus making them easily subject to predation. In 2008, only 253 adult salmon returned to the Mokelumne fish hatchery.

Petitioner seeks to divert water from a Bay-Delta system whose pelagic fisheries, including ESA-listed delta smelt, splittail and candidate species longfin smelt, are extensively documented to be in a state of collapse. Anadromous fish species that pass through the same system, including ESA-listed winter-run Chinook, spring-run Chinook, steelhead and green sturgeon, are also in a state of crisis; salmon fishing has been suspended in ocean waters off the state and in almost all of the state's rivers and streams. Lack of flow through the Bay-Delta has been identified as a major contributor to the decline of fish species, because it diminishes water quality, reduces successful outmigration and the likelihood of successful spawning migration back through the Delta on the part of anadromous fish, and diminishes in-Delta conditions needed for a food web sufficient to support fish of all species. Reducing flow into and through the Delta will damage public trust fishery resources and is not in the public interest.

Petitioner reviews some of the history of San Joaquin County's efforts to gain contract water with the Bureau of Reclamation, but fails to mention that San Joaquin interests have consistently pursued environmentally damaging water supply projects at points of diversion well upstream of the Delta. San Joaquin has eschewed points of diversion in the Delta that would protect instream beneficial uses in the Mokelumne River and other upstream watersheds. The trouble and expense of pumping and treating Delta water has always been weighed more heavily by the County than protecting the Delta's tributaries. The County has water supply options.

On page 16 of its petition for extension of time, petitioner unabashedly states that is in the public interest for petitioner to “implement its conjunctive use projects thereby placing more water into the critically overdrafted groundwater basin” while, on page 8, petitioner states that it “has not imposed any additional restrictions on groundwater pumping.”

Reviewing, petitioner proposes to take 16,000 afy out of the Mokelumne River in order to put it in any number of holes in the ground accessed by new facilities paid for with federal money. Petitioner proposes that this water will be pumped out of the ground leaving only a net deficit of 184,000 afy for the basin. Petitioner states that “the future use of the basin is expected to be consistent with historical use” (Supplement, point 11), though Petitioner elsewhere estimates that the groundwater deficit will increase, and that another 175,000 afy would be needed to address future growth. Petitioner, in what appears to us to be a point of pride, notes that it promulgated nothing mandatory in order to decrease demand. CSPA protests, with all due respect, that no aspect of the scenario is in the public interest.

CSPA also respectfully submits that this proposed use of surface water is contrary to the Water Code, which prohibits waste and unreasonable use, and unreasonable methods of diversion, of the State’s water resources, and is also contrary to the Public Trust Doctrine, the Endangered Species Act, and the Fish and Game Code.

**Under what conditions may this protest be disregarded and dismissed?** None.

Petitioner’s engineering report states, candidly:

“The North San Joaquin Water Conservation District and all other agencies within Eastern San Joaquin County must take immediate action to correct the overdraft. If nothing is done, the State will proceed with ‘adjudication’ of the basin.

“Adjudication means limiting groundwater pumping to natural recharge. It would result in all pumpers being restricted to approximately 75% of what they pump today. It would also eliminate any future development that would need more than 75% of the current groundwater use for a specific location.”

The overdraft of Eastern San Joaquin groundwater cannot and should not be remedied by infusion of surface water. The petitioner’s permit should be licensed according to average annual use. The State Water Resources Control Board should order adjudication of the Eastern San Joaquin groundwater basin.

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

Date: June 15, 2009.

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:  
North San Joaquin Water Conservation District  
221 West Pine Street  
Lodi, CA 95240