

**California Sportfishing Protection Alliance**  
*"An Advocate for Fisheries, Habitat and Water Quality"*

1608 Francisco St.  
Berkeley, CA 94703  
April 23, 2009

Kathy Mrowka  
Division of Water Rights  
State Water Resources Control Board  
P.O. box 2000  
Sacramento, CA 95812-2000

Regarding: KDM:29835

Dear Ms. Mrowka:

This letter is in response to your February 26, 2009 letter addressed to John Beuttler of the California Sportfishing Protection Alliance (CSPA), asking whether CSPA would agree to dismiss its protest of Water Rights Application 29835, filed in 1990 by the Mokelumne River Water and Power Authority (MRWPA or "Authority").

Your letter of February 26, 2009 references a February 3, 2009 letter from James C. Hanson, on behalf of MRWPA, also addressed to Mr. Beuttler.

For the record, I note that you extended by thirty days, via e-mail on March 18, 2009, the original thirty days allowed to CSPA to respond to Mr. Hanson's letter, in order that CSPA be able to review and consider several documents that were not immediately available. This response is therefore timely.

In his letter of February 3, Mr. Hanson points out that several of the features of the original application have changed. Notably, an option to create a new dam and reservoir at Middle Bar on the Mokelumne River has been abandoned by MRWPA, and a Joint Settlement Agreement (JSA) reached among East Bay Municipal Utilities District, California Department of Fish and Game, and the U.S. Fish and Wildlife Service has specified flows in the Mokelumne River below Camanche Reservoir and Woodbridge Diversion Dam. Mr. Hanson points out the Special Watershed Permit Terms 80, 90 and 91 would likely be applied to a permit issued to MRWPA, and that "it would appear that your [CSPA's] concern regarding the lower Mokelumne River and the Sacramento-San Joaquin Delta are also no longer an issue."

A water availability analysis provided to the Board by MRWPA on January 20, 2002 showed that, even accepting the adequacy of the JSA, water would not be available to applicants under the permit in 51 out of 75 years. On this basis alone, CSPA maintains that there is not enough water available in enough years to support the application.

Moreover, the JSA and permit term safeguards, which Mr. Hanson suggests should backstop the protection of the lower Mokelumne and the Delta should the Authority's application be granted, are inadequate. 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 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.

While Application 29835 proposes to make use of Pardee Dam to divert water, it says nothing about the lack of passage for salmon and steelhead past this dam, in apparent violation of section 5931 of the Fish & Game Code. The JSA provides for a trap and haul program to move anadromous fish, in certain circumstances, upstream of Camanche Dam; however, the more appropriate habitat is upstream of Pardee. The MRWPA, and the State Board, should address the need to provide passage to get fish upstream into this superior habitat.

Numerous recent documents, including the *Draft Limiting Factor Analyses & Recommended Studies for Fall-run Chinook Salmon And Rainbow Trout in the Tuolumne River* (Mesick et al, 2007, Anadromous Fish Restoration Program) have shown that the successful Central Valley salmon and steelhead escapement is highly correlated with floodplain inundation and high spring flows during the juvenile rearing and outmigration lifestages of salmon and steelhead. However, this is exactly the water that MRWPA proposes to siphon off to a Duck Creek Reservoir, thus making the flow schedule in the JPA not only the minimum flow but the target flow. The JSA flow schedule was formulated, moreover, with the knowledge of occasional high flow events on the Mokelumne, and presumably took into account and relied on the good, high water years to supplement conditions for those years in which spills did not occur.

Equally, as regards the Delta, the application contemplates no benefit for spill flows, from the Mokelumne, or presumably elsewhere. This comes at a time when D-1641, which in 1999 overrode CSPA's public trust complaint on the Mokelumne River (referenced in CSPA's protest of application 29835), has been found to be woefully inadequate in protecting Delta resources and is expected to be re-opened in the next few years, notably in regards to Delta outflow requirements.

Because there is water available in too few years to support the MRWPA's application, and because the use of water in those years when water is available over and above the JPA's flow schedule would irreversibly harm instream beneficial uses in both the lower Mokelumne and the Delta, CSPA requests that the State Water Resources Control Board deny the permit. Should the Board fail to do so, CSPA requests an evidentiary hearing to resolve the matter.

Thank you for your consideration. If you have any questions, please do not hesitate to contact me.

Respectfully submitted,

Chris Shutes  
FERC Projects Director  
California Sportfishing Protection Alliance

cc: Mokelumne River Water and Power Authority  
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