

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

APPLICATIONS: 476, 22061 PERMITS: 271, 16040

I, Chris Shutes, FERC Projects Director, California Sportfishing Protection Alliance, 1608 Francisco St., Berkeley, CA 94703. (Name and address of Protestant)

have read carefully a notice relative to a petition for an extension of time and change of **Paradise Irrigation District**, under applications 476 and 22061 for Permits 271 and 16040 to appropriate water from **Little Butte Creek, tributary to Butte Creek thence Butte Slough thence Sacramento River or East Borrow Pit of Yolo Bypass.**

(Name of Source)

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 seeks to extend the time to put its permitted rights to full use. Petitioner seeks to restore to Magalia Reservoir to full usable capacity by bringing its dam into conformance with requirements by the Division of Safety of Dams, which has since about 1997 limited storage in Magalia Reservoir due to seismic concerns. Petitioner seeks to expand the usable storage capacity of Paradise Reservoir by 750 acre-feet by deploying an inflatable apparatus at the top of the existing dam. Petitioner seeks to expand the place of use under its permits to include areas adjacent to its present service area that it does not currently serve under the existing permits. Petitioner also seeks to change the type of diversion permitted from diversion to storage to diversion to storage and also direct diversion, and specifically cites the possibility of consecutive dry years as the likely circumstance of the need to directly divert. Petitioner also seeks to include under purpose of use hydroelectric generation, though Petitioner states that it has no immediate or specific plans for such use.

Little Butte Creek downstream of Magalia Reservoir, and Butte Creek downstream of confluence with Little Butte Creek, are listed as critical habitat for anadromous salmonids by the National Marine Fisheries Service. Little Butte Creek downstream of Magalia Reservoir is known to contain Central Valley steelhead, and may also contain Chinook salmon. Central Valley steelhead are listed under the federal Endangered Species Act as threatened. Central Valley Spring-run Chinook salmon are similarly listed under the federal ESA and are also listed under the California ESA. While it is not known if Spring-run Chinook spawn in Little Butte Creek, it is possible, and it is perhaps even more likely that some of the progeny of Spring-run in Butte Creek (which is home to about 70% of the adult Spring-run spawners in the Central Valley) use Little Butte Creek as rearing

habitat. Further, releases from Magalia reservoir into Little Butte Creek affect habitat in Butte Creek downstream of Little Butte Creek confluence. Finally, there are some Fall-run Chinook in Butte Creek, some of which may spawn, incubate and rear in Little Butte Creek, as do steelhead.

Runs of Central Valley Chinook salmon were cumulatively at a 20-year low in 2007, and draconian closures of salmon fishing in both ocean and fresh water are currently being discussed by the entities with jurisdiction. Though the situation of Central Valley steelhead has not been quantified with the same precision, we know of no Central Valley river where runs were thought to be good by any angling group or fisheries agency. The run of steelhead in Butte Creek in winter 2007-8 was particularly poor, according to local residents. This circumstance highlights the extreme importance of insisting that all water rights conform with all aspects of existing law.

Section 5937 of the California Fish and Game Code requires dam owners to maintain the fishery downstream of their dams in good condition. Based on discussions with local residents, the existing steelhead fishery in Little Butte Creek would more accurately be described as a remnant population than a fishery in good condition. There is to our knowledge no instream flow requirement for Little Butte Creek downstream of Magalia Reservoir. However, each aspect of Petitioner's petition threatens to reduce the instream flow in Little Butte Creek and further detract from the downstream fishery.

Petitioner states that, if granted, its petition would not result in a greater annual diversion from Little Butte Creek than that which was contemplated in the original permit. The point, however, is not only the gross amount of water diverted in any given year, but also the timing, magnitude and duration of instream releases downstream of Magalia Reservoir needed to maintain the Little Butte Creek fishery in good condition.

Section 1701.3 (b) (2) of the California Water Code states that the State Water Resources Control Board may request that a petitioner for a change of a permit provide additional information reasonably necessary to "demonstrate that the change will comply with any applicable requirements of the Fish and Game Code or the Federal Endangered Species Act of 1973."

Section 1701.2 (3) of the California Water Code states that a petition for change in a permit or license must "include all information reasonably available to the petitioner, or that can be obtained from the Department of Fish and Game, concerning the extent, if any, to which fish and wildlife would be affected by the change, and a statement of any measures proposed to be taken for the protection of fish and wildlife in connection with the change." Petitioner has failed to fulfill this requirement, contrary to applicable law.

Before Petitioner is allowed alter the terms of its permits, or take any more water out of the Little Butte Creek watershed than it has historically, it needs to first demonstrate that the fishery downstream of Magalia Reservoir is in good condition. That means, at minimum, that releases are adequate to support steelhead migration, spawning, incubation, rearing, and outmigration, and that sufficient high flows occur to maintain spawning gravels in usable condition. Further, Petitioner must demonstrate that proposed increases in upstream storage, introduction of hydroelectric generation facilities, and the allowance of direct diversion, particularly in dry years, will allow instream flow releases downstream of Magalia Reservoir that will keep the Little Butte Creek fishery in good condition, and also not adversely affect the fishery in Butte Creek below Little Butte Creek confluence. In short, Petitioner must demonstrate whether it is now, and whether it will in the future be, in conformance with California law, specifically with Fish and Game Code Section 5937.

Under what conditions may this protest be disregarded and dismissed?

1. Petitioner must quantify the present condition of all life stages of the anadromous salmonid fishery in Little Butte Creek downstream of Magalia Reservoir, including an analysis of the present condition of spawning habitat. 2. Petitioner must agree to a scientifically justified flow regime to maintain habitat for all life stages, and all life stages of the anadromous salmonid fishery in Little Butte Creek downstream of Magalia Reservoir in good condition. 3. Petitioner must agree to maintain a flow regime in Little Butte Creek downstream of Magalia Reservoir that conforms to the thermal and all other requirements of the Central Valley Basin Plan. 4. Petitioner must agree to curtail or eliminate direct diversion as needed to conform to said flow regime. 5. Petitioner must agree that any future hydropower enhancement under its permit conform to RPS standards as they exist as of this date, specifically that it does not permit peaking operations that would pulse water into any natural stream channel and that it would not create a new bypass reach. 6. Petitioner must develop and conform to a water conservation plan. 7. Petitioner must develop and institute an ongoing monitoring plan that evaluates both the condition of the anadromous salmonid fishery and thermal conditions in Little Butte Creek downstream of Magalia Reservoir. 8. If in investigating the current condition of the fishery in Little Butte Creek downstream of Magalia Reservoir, it is determined that the fishery is in impaired condition, Petitioner must mitigate to bring the fishery into good condition. 9. If subsequent to permit issuance, through its monitoring program of the fishery in Little Butte Creek downstream of Magalia Reservoir, it is determined that the fishery is in impaired condition, Petitioner must mitigate to bring the fishery into good condition.

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

Date March 18, 2008 Chris Shutes, FERC Projects Director,
California Sportfishing Protection Alliance

Protestant(s) 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.

(NOTE: Attached supplemental sheets as necessary)

PRO-PET (1-00)

Additional concerns/protest:

Mailed version also sent on this date to the SWRCB.