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: 29657**

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 new APPLICATION **of the County of San Joaquin and Assignees**, to appropriate water from **the Sacramento River at Freeport Diversion at a rate of up to 350 cubic feet per second by direct diversion, and thence to storage of up to 147,000 acre-feet per year to storage at Duck Creek Reservoir and to groundwater storage at various points within San Joaquin County.**
(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:**

Applicants seek to divert up to 147,000 afy 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 of 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, especially in such magnitude as is contemplated by Applicant, will damage public trust fishery resources and is not in the public interest.

The State Water Project alone has 4.2 million afy in annual contracts, but delivers an average of less than half that figure. According to our rough calculations, over four times the actual annual flow is already permitted or licensed in the Bay-Delta system. Applicant has made no case that water is available for appropriation.

In its Attachment to 3rd Amended Application 29657, Applicant states: "Past efforts by entities within San Joaquin County to obtain water supplies from streams within the County have been denied and both the Sate and Federal agencies have repeatedly directed the County to the American River as the source for meeting its supplemental water supply requirements. Under this application the County asserts its priority to use water under Water Code Section 11460."

Applicant thus apparently seeks to claim area of origin priority under Section 11460 to water that it proposes to export from the Sacramento River system to the Mokelumne and Calaveras systems (sometimes considered part of the San Joaquin system, at other times an intermediate "mid-Delta" category unto themselves). Apparently, Applicant seeks justification for this priority either in the fact that the "State and Federal agencies" suggested looking for water in the American drainage, or perhaps in the fact that San Joaquin County is in the "proximity" of the source American River. While Applicant at some time in the past has abandoned the proposed points of diversion on the American River, South Fork American, Deer Creek and Laguna Creek, and now proposes to directly divert only from the Sacramento River, new environmental information was not provided to accompany this change in proposed diversion point, and the environmental information that includes the claim under Section 11460 apparently still stands.

Whether the American River or the Sacramento River is to be the presumed natal source of the water Applicant proposes to divert, the claimed basis under Section 11460 is contrary to law. The "State and Federal Agencies" have no authority to transfer area of origin rights geographically, nor, for that matter, does the State Board. Indeed, the very notion of area of origin is counter to such a claim. The fact that Applicant has been unsuccessful, given modern environmental reality, in its quest to obtain area of origin water in its area of origin does not thereby grant it leave to poach "area of origin" water from a different area.

**Under what conditions may this protest be disregarded and dismissed?**

1. Applicant must abandon its area of origin claim to water that is not in its area of origin, and re-file. 2. Applicant must provide a water availability analysis that demonstrates that water is available for appropriation. We believe this is inseparable from a more general process that the State Board must conduct in order to determine how much water is actually used under existing permits and licenses, and to determine how the Board will address the disparity between permitted water and water put to use.

Should the applicant be able to demonstrate the availability of water for diversion by the Applicant at Freeport, we must reserve the right to state what further conditions for dismissal might be acceptable until such time as a complete environmental analysis has been made by Applicant, so we are able to evaluate that the full impacts of the proposed project.

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

Date May 13, 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)