

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 – (Applications)**

**BASED ON ENVIRONMENTAL OR PUBLIC INTEREST CONSIDERATIONS**  
Protests based on Injury to Vested Rights should be completed on other side of this form

**APPLICATION: 31553 and 31554      PERMIT:      LICENSE:**

**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 new APPLICATION of **Rogina Water Co., Inc.**, to appropriate water from **Russian River and underflow of Russian River, tributary to Pacific Ocean.**  
(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 |          |
| <b>(2) not best serve the public interest</b>                                    | <b>x</b> |
| <b>(3) be contrary to law</b>  | <b>x</b> |
| <b>(4) have an adverse environmental impact</b>                                  | <b>x</b> |

**State Facts, which support the foregoing allegations:** The SWRCB has declared the portion of the Russian River in which Rogina Water Company (RWC) has requested a water right to be fully appropriated (Water Right Order 98-08, Exhibit A, page 26). Water Code section 1206 states that “from and after the date of adoption of a declaration that a stream system is fully appropriated...the board shall not accept for filing any application for a permit to appropriate water from the stream system described in that declaration, and the board may cancel any application pending on that date.” Therefore, it was improper for the SWRCB to accept applications 31553 and 31554. RWC has characterized its water right as “pre-49”. The company first began diverting water from the Russian River in 1947. Although users whose use began before January 28, 1949 are exempted from the fully appropriated designation, RWC is not eligible for the exemption because its diversion has never been unauthorized or sanctioned by the SWRCB. Moreover, RWC cannot prove its diversion began in 1947 and the SWRCB has no documentation of such diversion by nature of its illegal nature. Even if RWC was eligible for this exemption, “pr-49” is not a category of water rights in California.

In addition, The Russian River has been under strict conservation restrictions during the Summer of 2007. Sonoma County Water Agency and its members have been required to implement a 15% reduction in diversions from the River. In addition, flows in the River are required to be maintained at a certain level. Order WR 2007-0015-DWR stipulated the following terms:

- From June 1 through October 28, 2007, minimum instantaneous flow in the Russian River between the confluence of the West Fork and East Fork Russian River and Dry Creek shall be: 75 cfs, except that the flow shall be not less than 125 cfs at the USGS gages at both Hopland (No.11462500) and Healdsburg (No. 11464000) on the Russian River, after a cumulative

seasonal total of 200 adult Chinook salmon move upstream past the SCWA Mirabel inflatable dam. A lag time of three to seven days for the higher flows to reach Healdsburg is appropriate.

- Minimum flow in the Russian River between its confluence with Dry Creek and the Pacific Ocean shall be as follows unless the water level in Lake Sonoma is below 292.0 feet with reference to Temporary Urgency Change Order Page 9 Permits 12947A, 12949, 12950 and 16596 the National Geodetic Vertical Datum of 1929, or unless prohibited by the United States Government: 85 cfs instantaneous flow, as measured at the Hacienda Bridge near Guerneville. 125 cfs instantaneous flow at the USGS gage on the Russian River at Healdsburg, within seven days after a cumulative seasonal total of 200 adult Chinook salmon move upstream past the SCWA Mirabel inflatable dam.

The applicant also has not attached a water availability analysis. According to Water Code section 1260(k), every water right application submitted to the SWRCB must include "sufficient information to demonstrate a reasonable likelihood that unappropriated water is available for appropriation." The omission of a water availability analysis renders this application non-compliant with California law.

**Under what conditions may this protest be disregarded and dismissed? 1) the applicant appends a water availability analysis to the application, 2) the applicant agrees to monitor the wells and ensure flows in the river to keep all aquatic life in good condition, 3) the applicant agrees to make monitoring results available to the public, 4) pumping is restricted during drought conditions, during low flow situations, and pursuant to Order WR 2007-0015-DWR, 5) the applicant installs proper fish screens on the well intakes to prevent injury to fish and other aquatic species, 6) the SWRCB includes within the permit a term requiring compliance with a conservation plan, and 7) applicant will provide appropriate mitigation for all past unauthorized diversions.**

A true copy of this protest has been served upon the petitioner by mail.

(Personally or by mail)

Date September 17, 2007 Chris Shutes, FERC Projects Director,  
California Sportfishing Protection Alliance

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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:

Faxed version also sent on this date to the SWRCB.