

ISSUES LIST - Petition for Reconsideration:

PROCEDURE [added]

Does Government Code Section 11504 require SWRCB to develop an issues list for protests?

May development of an issues list by staff be used by to staff to deny the right to oppose a permit extension?

If staff is unable to develop an issues list may the protestant submit his own?

Water Code Sections 1340 & 1341 contrasted with Section 1342 shows that petitioners and protestants have an equivalent right to a formal hearing,.

Is there any ADA consideration for a weakened protestant filing against an overwhelmingly powerful applicant?

Is the protest procedure the correct way to oppose a petition for extension?

Does Section 843 of the board's regulations have any basis in statute?

Is the correct opposition to a petition for extension of a permit a petition to revoke or allow to lapse?

Is a petition to allow a permit to lapse subject to the same subject-matter limitations as a petition to revoke?

Since Water Code Sections 1410 et seq. specifically allow SWRCB to consider whether or not permitted waters are being beneficially used, is the staff statement "The decision regarding the quantity of water to assign to the permitted water right was made at the time the permit was issued and is not subject to review at this time" patently false?

Does the provision of Water Code Section 1398 on extensions that points to Section 1410 render false the staff statement "The decision regarding the quantity of water to assign to the permitted water right was made at the time the permit was issued and is not subject to review at this time"?

Does the deliberate waste of water provide grounds for revocation of a permit?

Where the permittee buried the quantity of waste in reports after 1946 which he had previously openly reported, while the total diversion did not change, may equivalent waste be presumed?

Does the use of water in excess of what the Angle Decree allows provide grounds for revocation of a permit?

May petitions under both provisions of Subdivision (b) of Water Code Section 1410 be presented in a single petition and heard simultaneously?

Since division staff routinely reduces the water allowed an applicant following physical inspection and at the time of issuing a license, is the staff statement "The decision regarding the quantity of water to assign to the permitted water right was made at the time the permit was issued and is not subject to review at this time" patently false?

Does the staff statement "The decision regarding the quantity of water to assign to the permitted water right was made at the time the permit was issued and is not subject to review at this time" spring from an unlawful underground regulation?

May multiple petition theories be directed against a petition for extension?

Is the reconsideration Chapter of the Water Code, Sections 1120-1126.2 the correct appeal procedure for denial of the right to protest a petition for extension of permit?

Does the failure of staff to include in its denial of the right to protest that the denial is a

"decision" or "order" (or was adopted by the board), or to serve a copy of that decision or order by personal delivery or registered mail, extend in perpetuity the time to petition for reconsideration of that denial until such time as staff or the board corrects those omissions?

Is the discussion of SWRCB protests in *Temescal Water Co. v. Dept. of Public Works*, 44 C.2d 90, 1955, dicta?

May a request for a formal hearing be responded to by simply ignoring it?

Understanding that staff routinely asks for clarification from an applicant, under what circumstances if any ever does staff ask for clarification from a protestant?

JURISDICTION/CONTRARY TO LAW:

Under the Angle Decree, the SWRCB has no jurisdiction over surface flows within the Stony Creek watershed until such time as those flows leave the watershed.

Under the Angle Decree, USA (and all agencies of the USA including the United States Forest Service and the Bureau of Land Management) and no one else who owned property or is the heir, successor, or assign of a Decree-named party or parcel owner (including the State of California or any other governmental entity) may seek or receive any right to surface flows from the SWRCB or declare any right outside rights to surface flows named in the Decree with any filing with the SWRCB.

The SWRCB may not award what these Angle parties, successors or assigns are not allowed to request or receive.

SWRCB must stop handling disputes between or among claimants to surface waters within the Stony Creek watershed.

SWRCB must reverse its approach in Ap. 27382 and protect the rights to riparian underflows in the Upper Stony Creek Watershed.

The presence of a decree like the Angle Decree overrides the rationale for generally rejecting the protest of an upstream user against a downstream applicant.

Does overwhelming wealth and power of an applicant compared to a financially and litigiously weak upstream user override the rationale for generally rejecting the protest of an upstream user against a downstream applicant?

Water Code Section 138 relates to legislative policy that permits, etc. may not be issued to persons who may not lawfully receive them. [added]

Does Water Code Section 138 or some comparable statute require refunds of all fees collected from permits and licenses for surface flows within the Stony Creek watershed since January 13, 1930? [added]

Does my pending motion in U.S. District Court due to be heard 02/08/2010 on realigning the Water Master's thinking with the Angle Decree impose any duty on the SWRCB to wait for the decision or adopt a position and actively appear in that case to advocate it? [added]

The creation by Reclamation and OUWUA of the Lateral 40 Intertie to the Tehama-Colusa Canal in defiance of SWRCB orders warrants enforcement action.

Does the underlying Fraud on the Court that destroyed most riparian rights on Stony Creek impose a duty on the SWRCB as custodian and caretaker of California waters and water rights to appear in the Angle Decree and move to set the Decree aside and dismiss the underlying case?

Is the presence of the California Water Commission in the Black Butte Project (with its condemnation of lands to which the Angle Decree awarded rights) sufficient to accord standing to the State in the Angle case without it having to intervene, that is, of right rather than privilege?

Did the interference by SWRCB in the Stonyford Water District Ap. 27382 case impose a duty on the SWRCB to notify interested parties of its error and inform Colusa County that as far as SWRCB is concern there is no limit on its use of that underflow because there is no other legitimate claim to it?

Because of the excess diversions of USA and OUWUA and their use of Lateral 40 to guide water around the reach of Stony Creek west of Orland, does SWRCB have a duty to the heirs or assigns of the complainant in Ap. 20104's related complaint rejected 01/14/1997 to re-examine that complaint and issue an appropriate order ensuring the delivery of adequate underflow to those heirs or assigns? [added]

There was no drafting error on underflow in the Angle Decree, it was deliberately written that way by a skilled and seasoned U.S. Government water lawyer.

PUBLIC INTEREST :

It is improper to designate a stream as fully allocated when the allocation is less than 10% of its peak annual total.

Fully Allocated status for Stony Creek is erroneous since the only thing that makes the watershed fully appropriated is the taking of waters in excess of what the Angle Decree allows, and that Fully Allocated status must be reversed.

The massive cumulative adverse impacts inflicted upon the economy and people of the upper Stony Creek Watershed by USA's ever-increasing control of the watershed violates California Counties of Origin and Areas of Origin statutes and common law.

SWRCB must take action to halt and punish USA under Water Code Section 1052 for its taking of surface waters in excess of those Decreed, in that those waters have been stolen from the people of the State of California who are entitled to them when they flow out of the Stony Creek watershed.

With the Orland Project devolving into hobby farms, its use of irrigation water is becoming waste, per se.

Is it waste to leave East Park Reservoir full most of the time?

ENVIRONMENT & PUBLIC TRUST:

Under CEQA, where there are substantial adverse effects on human beings, including cumulative effects, for which feasible mitigations exist, those mitigations must be adopted or the project not be allowed to proceed.

NEPA requires that an EIS shall be included in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment. [added]

CEQA talks of projects, but NEPA talks of proposals, and thus a permit extension is subject to NEPA. [added]

NEPA requires analysis of the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions, regardless of what agency (federal or nonfederal) or person undertakes such other actions; cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time. [added]

A NEPA Categorical Exclusion that ignores cumulative impacts is invalid. [added]

Without the extension, the cumulative substantial adverse impacts will be reduced or halted.

A project extension without mitigations means that the cumulative substantial adverse unmitigated impacts will continue and increase.

A project extension with the required mitigations means that the cumulative substantial adverse impacts will begin to improve or slow their rate of increase.

The Board has no power to deny the requirements of NEPA, CEQA, ESA, CalESA, Guidelines, Regulations, the Bald and Golden Eagle Protection Act of 1940.

The environmental reviews and mitigations required so far in the processing of Ap 18115 and its related permit have been quite inept.

USA's control and management of the stream impose upon it the obligation to control and manage it properly: care for the fish and wildlife, and clean up the invasive plant species.

Does the presence of vast quantities of invasive plants within the reservoir footprint violate the permit term requiring the applicant to remove the vegetation before filling the reservoir?

Without a proper seismic warning plan it is improper and reckless for applicant to proceed with its petition and appallingly unwise for SWRCB to allow it.

May the SWRCB shift the environmental assessment data collection duty from applicant to protestant? [added]

SALMON/STEELHEAD/BALD EAGLES/CALIFORNIA CONDORS/GRIZZLY BEARS:

Staff assertion that "the protest citations are to reports that were prepared prior to a 1996 Division Order" is untrue in that it ignores the NMFS Stony Creek biological opinions of 2002 and 2008 that were named in the protest. [added]

Staff assertion that "It is unclear whether the protest is asserting that fishery conditions after 1996 remain inadequate" is misleading in that fishery conditions after 1996 are both desperate and deteriorating, as shown in the flood of new studies and the listing of more species or sub-species of fish. [added]

Are there experiments with chillers anywhere to keep stream temperatures down for anadromous fish?

Does the equivalence of the "take" provision in the Endangered Species Act and the Bald and Golden Eagle Protection Act of 1940 mean that the Eagles enjoy the same regulatory protection as ESA listed species even if they have been delisted?

An incidental take permit does not alleviate the duty to adopt feasible mitigations that will reduce or prevent the take of listed species.

Does the possibility that continued anti-fishery actions by the SWRCB may torpedo my pending petitions with the responsible agencies to extend critical habitat status for Chinook and Steelhead the full length of Stony Creek plus Grindstone Creek and all forks of Big Stony impose any duty of extra care on SWRCB? [added]

Portions of the forks of Big Stony are already designated wilderness and Grindstone is

devolving towards that, and with that both are unstated candidates for experimental reintroduction of extirpated species like California Condor and Grizzly Bears which as with Bald Eagles feed on Salmon and Steelhead (as would the current large population of black bears if the fish were there), which requires petitioner to reverse what it has done to those tributaries and restore those fisheries in advance of these repopulations. [added]

For a project that is killing listed species, what possible justification could the SWRCB have for allowing a FONSI?