

Ms. Dorothy Rice, Executive Director
State Water Resources Control Board
Hand carried

December 20, 2009

Re: Victoria Whitney Letter 12/14/2009 KDM:18115

Dear Ms. Rice,

Cited below is a URL for a denial from your Division of Water Rights of the right to protest an application with massive cumulative environmental impacts. In reviewing the Ap. 18115 files I believe I count over the years some 66 protests with 59 rejected outright, and of those rejected all but one were filed by seasoned water rights professionals. What is your administrative appeal process for such denials? In reviewing related cases I find some sort of unwritten rule being applied to protests of the general public and a contrary rule that is being applied to protests from Reclamation, Glenn-Colusa Irrigation District, or Orland Unit Water Users' Association, even where the general public complies precisely with Regs 745, 748, 749, & 843, & Water Code Sections 1331-1335. Where are the hidden rules that prescribe such a routine denial for the public and the routine grant of protestant status to USA, GCID, & OUWUA, and have those rules been properly vetted? If so, where is the record of that vetting, including of California Constitutional Due Process requirements? Where is the hidden rule that a permit extension is not subject to CEQA or NEPA regardless of impacts and has that rule been vetted? Where is the rule that requires Water Rights staff to reduce protests to a series of one-liners and in the process misstate, distort, trivialize, or miss altogether the protests submitted and in the process interfere with or deny outright the public's statutory right to protest? URLs:

<http://www.mjbarkl.com/index10.htm> - Protest Table of Contents (not filed with the protest)

<http://www.mjbarkl.com/p1.htm> - Forms

<http://www.mjbarkl.com/p2.htm> - Supplement

<http://www.mjbarkl.com/p3.htm> - Exhibits

<http://www.mjbarkl.com/swrb1214.pdf> - Denial of protest by Ms. Whitney

<http://www.mjbarkl.com/whitney.pdf> - Letter to Ms. Whitney regarding that denial

Further, in reviewing the Ap. 18115 files I recall CEQA reviews, but no NEPA reviews. California Sportfishing Protection Alliance repeatedly asked for NEPA reviews but they never happened. In a 03/11/1994 letter Reclamation asserted compliance with NEPA through a long-since expired CEC without any consideration whatsoever of cumulative impacts, and the usual absence of NEPA discussions in Reclamation permit files suggests SWRCB routinely ignores NEPA requirements. NEPA review is required for this USA applicant, even for permit extensions where SWRCB might argue that a CEQA review is not required, and the massive cumulative impacts on Stony Creek must be considered, not ignored..

I repeat my requests for a hearing. Please do not delay your response.

Best wishes,

Michael J. Barkley

cc: Bob Colella

Exhibit B-3