



State Water Resources Control Board



Linda S. Adams
Secretary for
Environmental Protection

Division of Water Rights

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Arnold Schwarzenegger
Governor

In Reply Refer
to:KDM:18115

DEC 14 2009

Michael J. Barkley
161 N. Sheridan Avenue, #1
Manteca, CA 95336

Dear Mr. Barkley:

PERMITTED APPLICATION 18115 OF U.S. BUREAU OF RECLAMATION (RECLAMATION),
BLACK BUTTE DAM PORTION OF CENTRAL VALLEY PROJECT (CVP)

The Division of Water Rights (Division) has reviewed the protest of the time extension petition on permitted Application 18115 that Reclamation holds for the Black Butte Dam portion of the CVP that you filed.

The Division makes determinations regarding the maximum quantity of water that should be allocated to a new water user only when there is a pending water right application before it. 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. The time extension petition does not propose an increase in allowable diversion, but rather requests additional time for the purpose of making full beneficial use of the permitted quantity of water. The protest, therefore, should address how the time extension will affect prior rights or public trust resources.

The protest raises the following issues, which are related to the underlying water right, not the pending time extension petition. These issues are not accepted:

- The project is inconsistent with watershed protection principles, county of origin and area of origin statutes.
- The project involves waste. The protest describes a purported waste of water that occurred prior to 1946.
- The Angle Decree, which adjudicated the waters of Stony Creek, was based on fraud on the Court.
- The Angle Decree contains errors.
- The Angle Decree has a drafting error as it relates to underflow.

The protest states that salmon used to frequent Stony Creek, but the fish encountered barriers that existed in Stony Creek because of Reclamation's management of this resource. Glenn Colusa Irrigation District had an annual dam that had an effect on the fish. However, a siphon is now being used instead of the dam, so the dam is no longer an issue.

This element of the protest appears to relate to previous conditions on Stony Creek, because the protest citations are to reports that were prepared prior to a 1996 Division Order that instituted new bypass flow conditions in Stony Creek to improve fishery habitat. The 1996 Order also authorized installation of the siphon mentioned in the protest. It is unclear whether

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the protest is asserting that fishery conditions after 1996 remain inadequate. In any event, the protest did not separate ongoing project operation from any impacts that may occur as a result of the time extension. The protest should address how the time extension will affect the environment. Consequently, the protest issue is not accepted at this time. We will consider any statement of facts you submit on the fish habitat issue within 30 days from the date of this letter.

The protest also mentions the de-listing of bald eagles. It appears that this is an informational item.

Katherine Mrowka is the senior staff person presently handling this matter. Ms. Mrowka can be contacted at (916) 341-5363.

Sincerely,



Victoria A. Whitney
Deputy Director for Water Rights

cc: Bob Colella
U.S. Bureau of Reclamation
2800 Cottage Way
Sacramento, CA 95825