

State of California

Before the State Water Resources Control Board

Change Petition

United States Bureau of Reclamation, Petitioner

California Department of Water Resources, Petitioner

Water Right Permits 16478, 16479, 16481, 16482 and 16483 (Applications 5630, 14443, 14445A, 17512, and 17514A) of the California Department of Water Resources and Water Right Permits 11315, 11316, 11885, 11886, 11887, 11967, 11968, 11969, 11970, 11971, 11972, 11973, 12364, 12721, 12722, 12723, 12725, 12726, 12727, 12860, and 15735 (Applications 13370, 13371, 234, 1465, 5638, 5628, 15374, 15375, 15376, 16767, 16768, 17374, 17376, 5626, 9363, 9366, 9367, 9368, 15764, 22316) and License 1986 (Application 000023) of the United States Bureau of Reclamation

Written Testimony of Bob Baiocchi, Executive Director and Water Rights and Fisheries Consultant For the California Salmon and Steelhead Association

My name is Bob Baiocchi. I reside at 69870 Mohawk Vista Drive, Road 4 in Blairsden, California. I am the Executive Director for the California Salmon and Steelhead Association. I am also a water rights and fisheries consultant for the California Salmon and Steelhead Association. I qualified as an expert witness before the State Water Resources Control Board at the Bay Delta Hearings in the 1990s. My background is attached to my testimony. I am 78 years of age. I am disabled and cannot travel to Sacramento to orally testify. I request accessibility and accomandations to orally testify at my home.

The State Water Board is holding a hearing to receive evidence relevant to determining whether to the approve California Department of Water Resources (DWR) and United States Bureau of Reclamation's (USBR) petition to consolidate the authorized place of use of the USBR's permits and license to include the State Water Project (SWP) authorized place of use downstream of the Barker Slough and Harvey Banks Pumping Plants, and the DWR permits to include the Central Valley Project (CVP) and Friant authorized places of use downstream of the confluence of the Sacramento and Feather Rivers petition for change in place of use.

There have been significant losses to Chinook salmon species at the State Pumps in the Bay Delta Estuary resulting from water being diverted from tributaries to the Bay Delta. Some of those losses most likely have been to spring-run Chinook salmon species that migrated from the Sacramento River watershed and also migrated from the San Joaquin River before spring-run salmon were exterminated by the USBR's Friant Dam on the San Joaquin River and other dams on tributaries to the San Joaquin River watershed. Because of the extermination of spring-run Chinook salmon of the San Joaquin River, the spring-run salmon species were listed as endangered under the protection of the federal Endangered Species Act.

I believe the losses to the San Joaquin River spring-run salmon were because of the State Water Resources Control Board not ordering sufficient water to provide habitat for spring-run salmon species in all water right permits where water is diverted from tributaries to the San Joaquin River, and also not mitigating the effects to spring-run salmon species at the State Pumps in the Bay Delta Estuary.

There have been significant losses to Chinook salmon species at the State Pumps in the Bay Delta Estuary resulting from water being diverted from tributaries to the Sacramento River Watershed. Some of those losses most likely have been to endangered spring-run Chinook salmon species that migrated from the Sacramento River watershed.

I believe the losses to the endangered Sacramento River spring-run salmon species were because of the State Water Resources Control Board not ordering sufficient flows to provide habitat for endangered spring-run salmon species, and also not mitigating the effects to spring-run salmon at the State Pumps in the Bay Delta Estuary.

There was an attempted by the US NOAA Fisheries to mitigate for the losses to endangered Feather River spring-run salmon resulting from the Oroville Facility of the State Water Project (aka Oroville Dam). However that mitigation plan to mitigate for spring-run salmon above Oroville Dam was stopped by the Department of Water Resources, State Water Contractors, and PG&E.

In addition, there was a Habitat Expansion Plan for the entire Sacramento River Watershed that was agreed to by Art Baggett Jr. of the State Water Resources Control Board; Department of Water Resources; State Water Contractors; Pacific Gas and Electric Company; and other parties that limited the improvement of spring-run salmon populations levels in the Sacramento River watershed and also prevented the migration of endangered spring-run salmon habitat above the lowest dams. That Habitat Expansion Plan never saw the light of day with respect to the people reading and commenting on it, nor was there a hearing held before the

State Water Resources Control Board to mitigate for the effects to endangered spring-run salmon resulting from the Habitat Expansion Agreement. I reference Central Valley Spring-Run and California Central Valley Steelhead Habitat Expansion Plan.

There have been significant losses to steelhead trout species at the State Pumps in the Bay Delta Estuary resulting from water being diverted from tributaries to the Bay Delta. Some of those losses most likely have been to steelhead trout species that migrated from the Sacramento River watershed and also migrated from the San Joaquin River. Because of the loss of habitat (water) in the San Joaquin River and the Sacramento River, the steelhead trout species were listed as threatened under the protection of the federal Endangered Species Act.

I believe the losses to the threatened steelhead trout species were because of the State Water Resources Control Board not ordering sufficient flows to provide habitat for steelhead trout species in all water right permits where water is diverted from tributaries to the Bay Delta Estuary, and also not mitigating for the effects and losses to steelhead trout species at the State Pumps in the Bay Delta Estuary.

There have been significant losses to striped bass species at the State Pumps in the Bay Delta Estuary resulting from water being diverted from tributaries to the Bay Delta. In my opinion the striped bass species are “DeFacto” endangered species because of their losses at the State Pumps in the Bat Delta Estuary.

The subject Change Petition involves numerous water right permits issued by the State Water Resources Control Board. I have not review the specific language in each permit. However, based on my background in dealing with water rights, there may not be specific terms and conditions in said water right permits that protect salmon, steelhead, and striped bass and their habitats from harm and damages. Consequently, in accordance with this Change Petition, the Board must review all of the water right permits to assure the people that there are terms and conditions that protect the people’s public trust salmon, steelhead, and striped bass from harm and damages from the uses of water under the Change Petition at all points storage and diversion.

The State Water Resources Control Board has approved water transfers in violation of the California Water Code because of the losses to salmon, steelhead, and striped bass species at the State Pumps. I reference Section 1727 (a) (2) of the California Water Code. That code section states that “the proposed temporary change will not unreasonably affect fish, wildlife, or other beneficial uses”. I advised the Board and its staff not to approve water transfers because the water transfers violation Section 1727 (a) (2) of

the California Water Code because of the unreasonable fish losses and my objections were ignored by the Board and the subject water transfers were approved with continued fish losses at the State Pumps.

I also believe that the proposed Change Petition, if approved by the Board, will encourage and continue the losses to salmon, steelhead, and striped bass at the State Pumps. From 1984 to 2006 there were 22 million plus losses to salmon, steelhead, and striped bass at the State Pumps. I reference public information and data prepared by CDWR in letter to the Department of Fish and Game, dated January 31, 2007.

Salmon, steelhead, and striped bass are the property of the people of California. Fish are legal users of the waters of the State of California. I believe the proposed change petition would unreasonably affect fish at the State Pumps.

I also believe that the proposed Change Petition is the unreasonable diversion and unreasonable use of the state's water because of the unreasonable losses to salmon, steelhead, and striped bass species at the State Pumps pursuant to Article X, Section 2 of the California Constitution.

My testimony is based on the following: Public Trust Doctrine; Federal Endangered Species Act; California Fish and Game Code Section 5937; California Water Code; Article X, Section 2, of the California Constitution; and other applicable state and federal statutes.

Dated: April 13, 2009

Signed by Bob Baiocchi

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