



California Sportfishing Protection Alliance

"An Advocate for Fisheries, Habitat and Water Quality"

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Melissa Harris
Project Manager
U.S. Bureau of Reclamation, Planning Division
2800 Cottage Way
Sacramento, CA 95825
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VIA: Electronic Submission
Hardcopy if Requested

RE: Comments on the Upper San Joaquin River Basin Storage Investigation Draft
Environmental Impact Statement

Dear Ms. Harris:

The California Sportfishing Protection Alliance (CSPA) submits the following comments on the Upper San Joaquin River Basin Storage Investigation Draft Environmental Impact Statement (DEIS). CSPA is a party to comments submitted by Friends of the River and the Natural Resources Defense Council et al., and incorporates those submissions into these comments, which focus on the DEIS' flawed analysis of project water rights.

With respect to riparian flows on the San Joaquin River, the U.S. Bureau of Reclamation's (USBR) and other upstream diverters on the San Joaquin River have deprived Delta and lower San Joaquin River riparian landowners of the ability to divert riparian water because of their illegal diversion of riparian flows in the upper San Joaquin watershed. Regardless of any water rights issued by the State Water Resources Control Board (State Board) or contractual arrangements between USBR, the Exchange Contractors or other entities, neither they nor the State Board have a legal right to deprive riparian landowners on the lower San Joaquin River of riparian flows from the upper watershed. The appropriate water rights of the Exchange Contractors, members of the Friant Water Authority or others cannot obviate the rights of riparian landowners in the lower San Joaquin River or Delta to their fair share of riparian flows on the San Joaquin.

The rights of riparian landowners on the lower San Joaquin River and Delta extend to the winter flows necessary to maintain the streambed between Gravelly Ford and the confluence of the Merced River. They further extend to the flows necessary to maintain the water table below Gravelly Ford at levels that ensure that riparian flows will reach the confluence of the Merced River and will not infiltrate into the ground because of illegal diversion or excessive groundwater pumping adjacent to the river.

Inflow to Friant Reservoir is generally far greater than the flow in the San Joaquin River above the Merced confluence despite intervening agricultural return flows. The inflow into Friant is generally greater than San Joaquin River flow at Vernalis, despite the intervening inflow from the Stanislaus, Tuolumne and Merced Rivers.

The State Board has opined that Friant Project water rights cannot be transferred to the Temperance Flat Reservoir Project (Project). Consequently, the Project would have to apply for new water rights. The State Board has further pointed out that the Upper San Joaquin River is a fully appropriated stream and that USBR would have to seek a revision of the Declaration of Fully Appropriated Streams.¹

Neither the USBR's illegal diversion of riparian flow nor the project's need for new water rights and revision of the Declaration of Fully Appropriated Streams has been adequately disclosed or evaluated in the DEIS. This is a particularly fatal flaw with respect to the illegal diversion of riparian flow because it indicates that the Project is unlikely to have sufficient water to justify any additional storage.

The State Board is presently updating its Water Quality Control Plan for the San Francisco Bay-Sacramento-San Joaquin Delta Estuary (Bay-Delta Plan). Phase I of the Bay-Delta Plan update is focused on San Joaquin River Flow and Southern Delta Salinity Requirements. A revised Phase I Substitute Environmental Document is likely to be issued this coming winter. Phase II will address Sacramento River flow and Delta outflow. The State Board has indicated that present Delta outflows and San Joaquin River instream flows are insufficient to support identified beneficial uses and that an increase in flow requirements are warranted. CSPA has believed that the upper San Joaquin River must provide a fair share contribution to increased San Joaquin and Delta outflows and that the State Board is likely to require increased Delta outflow and San Joaquin River instream flow. Requirements that the upper San Joaquin River provide a fair-share contribution to lower San Joaquin River flows and Delta outflows would further decrease the viability of the Project. The DEIS is deficient in failing to adequately disclose and analyze the likelihood that additional flows from the upper San Joaquin River will be required in the Bay-Delta Plan update.

Thank you for your consideration. If you have questions or require clarification, please don't hesitate to contact us.

Sincerely,



Bill Jennings, Executive Director
California Sportfishing Protection Alliance

¹ Letter from Katherine Mrowka, Division of Water Rights, State Water Resources Control Board, to Robert Colella, USBR, Temperance Flat Reservoir Project – U.S. Bureau of Reclamation Permits 11885, 11886 and 11887 (Applications 234, 1465, and 5638), San Joaquin River in Madera and Fresno Counties, 7 August 2014.