I. INTRODUCTION

The California Sportfishing Protection Alliance (CSPA) respectfully submits this closing brief for the hearing in the matter of the pending application (A029657) of the County of San Joaquin to appropriate water from the South Fork of the American River.

The key hearing issues for this matter as stated in the Notice of Public Hearing and Pre-Hearing Conference issued by the State Water Resources Control Board’s (State Board) Office of Administrative Hearings (AHO) on June 10, 2021 are as follows:

1. Should the Board cancel Application 29657 under Water Code section 1276?
   a. Has the Applicant failed to provide information requested by the Board to demonstrate that unappropriated water is available for appropriation?
   b. Has the Applicant failed to provide information requested by the Board to demonstrate compliance with all applicable requirements of the Fish and Game Code and the federal Endangered Species Act of 1973?
c. Has the Applicant failed to provide information requested by the Board to comply with Division 13 (commencing with Section 21000) of the Public Resources Code?

d. Has the Applicant failed to provide other information requested by the Board that is reasonably necessary to clarify, amplify, correct, or otherwise supplement information required to be submitted under Article 2 (commencing with section 1260) or Article 3 (commencing with section 1270)?

e. Has the Applicant shown good cause for the Board to allow additional time in which to submit the requested information?

2. Should the Board cancel Application 29657 under Water Code section 1335?

a. Has the Applicant failed to provide information requested by the Board that the Board determined is reasonably necessary to attempt to resolve a protest?

b. Has the Applicant shown good cause for the Board to allow additional time in which to submit the requested information?

3. Should the Board deny Application 29657 under California Code of Regulations, title 23, section 840?

a. Does the Applicant intend to initiate construction of the works required for the contemplated use of water within a reasonable time and thereafter diligently prosecute the construction and use of water to completion?

b. Will the Applicant be unable to proceed within a reasonable time because of absence of a feasible plan, lack of required financial resources, or other cause?

4. Should the Board establish a time schedule for the Applicant to submit information necessary for the Division to process Application 29657?

The hearing record demonstrates that the AHO should recommend that the State Board cancel Application 29657 under Water Code §§ 1276 and 1335, and under CCR title 23, § 840. The facts of this case present the State Board with no other reasonable option. This case isn’t even close.

II. BACKGROUND

San Joaquin County (the County or Applicant) filed Application 29657 in 1990. Since 1990, the County has amended the application four times.

On September 9, 2010, the Division of Water Rights canceled Application 29657 for lack of diligence. (AHO-129). The Order Cancelling Application cited:

- The lack of progress in prosecuting the application between 2002-2009.
The absence of field reconnaissance in support of the application.

The inadequacy of the water availability analysis.

Failure to resolve any of the 18 protests filed in 2008.

Failure to provide adequate information to the State Water Board under “Government Code Sections 65943 through 65944.” (ld. at 4-7).

On June 10, 2011, the State Board’s Executive Director granted reconsideration, reinstating Application 29657 and remanding the Application to the Division of Water Rights to resolve several factual disputes and to establish timelines for the Application. (AHO-146).


On April 2, 2012, a consultant to the County transmitted to the State Water Board a cover letter (AHO-152), a revised water availability analysis (AHO-161), and a set of correspondence relating to that analysis between the Applicant and eight protestants or groups of protestants (AHO-153 through AHO-160). While Exhibits AHO-153 through AHO-160 demonstrate responses to protestants, the record does not demonstrate resolution between any protestant and the Applicant relating to the 2012 water availability analysis (AHO-161).

Between July 2012 and September 2013, there is correspondence in the record among various parties relating to legal and technical aspects of the water availability analysis. (AHO-162 through AHO-167). This correspondence equally does not demonstrate resolution of issues relating to the water availability analysis.

On August 21, 2013, Ms. Kathy Mrowka of Division of Water Rights staff wrote to Mr. Thomas Shepherd, counsel for the applicant, reporting on the status of the Applicant’s responses to deadlines established by the Division. (AHO-165). Staff reported no progress on the following issues:
• Production of a NEPA document.
• Agreement with Sacramento County on use of the Freeport diversion facility (one meeting reported).
• Agreements with private property owners.
• Access to the point of diversion.
• Consultation under Section 7 of the Endangered Species Act.
• Oak woodlands mitigation plan.
• Wetlands delineation for all project elements.
• Special-status plant studies and mitigation plan.
• Draft and final environmental impact report under CEQA.
• Protest resolution.

In November 2013, Water Rights staff wrote to counsel for the Applicant calling out a decision announced in the press to abandon the storage component of the Application, and suggesting the need for a revision of the application. (AHO-168). In a letter dated December 18, 2013, Counsel for the Applicant announced the need to revise Application 29657 and the need to reconsider previously established timelines in light of such revision (AHO-170).

On June 27, 2014, the Applicant submitted the fourth amended Application 29657 to the State Board. (AHO-171). This document is the final document in the administrative record for the application until 2020.

As described in the Notice of Hearing and Status Conference issued by the AHO on January 5, 2021: “On June 24, 2020, Erik Ekdahl, Deputy Director of the State Water Board’s Division of Water Rights (Division), sent a memorandum to Eileen Sobeck, the State Water Board’s Executive Director, proposing to transfer Application A029657 to the AHO. On June 24, 2020, Ms. Sobeck issued a memorandum assigning the application to the AHO.”
III. ARGUMENT

A. The Applicant Has Not Defined a Project.

After 30 years, San Joaquin County has not defined a project that would implement the application. This failure creates most of the legal deficiencies under the sections of the Water Cope and Government Code called out in the Hearing Notice.

The Hearing Notice asks whether the State Board should cancel Application 29657 under Water Code § 1276, which requires an applicant to provide additional information to the State Board to “clarify, amplify, correct, or otherwise supplement the information required to be submitted” under Water Code §§ 1260-1266 and 1270-1271.

Notably Water Code § 1260 requires an application to include:

(c) The nature and amount of the proposed use.
(d) The location and description of the proposed headworks, ditch canal, and other works.
(e) The proposed place of diversion.
(f) The place where it is intended to use the water.
(g) The time within which it is proposed to begin construction.
(h) The time required for completion of the construction.
(i) The time for the complete application of the water to the proposed use.
(j) All data and information reasonably available to applicant or that can be obtained from the Department of Fish and Wildlife concerning the extent, if any, to which fish and wildlife would be affected by the appropriation, and a statement of any measures proposed to be taken for the protection of fish and wildlife in connection with the appropriation.
(k) Sufficient information to demonstrate a reasonable likelihood that unappropriated water is available for the proposed appropriation.

As described in Background, supra, Ms. Mrowka’s letter of 8-21-13 (AHO-165) describes the absence of such information in Application 29657, with the exception of a Water Availability Analysis (WAA). As also described in Background, supra, several protesters disputed the adequacy of this WAA within several months of its release.

The missing information is not a mere matter of details or refinements; it is basic information, the necessary nuts and bolts of the application that 30 years after initial submittal and 7 years after the fourth revised application are still lacking.
The requested total diversions per year under Application 29657 is 147,000 acre-feet. (Fourth Amended Application, AHO-171). However, at the stated 155 cfs maximum rate of diversion through East Bay Municipal Utility District's (EBMUD) portion of the Freeport diversion facilities (SJC-16, ¶ 9) with a season of diversion of December 1 through June 30, San Joaquin County would be limited to less than half the stated annual amount. Mr. Buchman on cross examination by CSPA admitted that the Freeport limitation would make the maximum annual diversion “much less than a hundred forty-seven [thousand acre-feet per year].” (HT, p. 214:10-22; Video 2:10:58-2:12:32).

The gross approximation of the requested diversion amount, far in excess of the capacity of key proposed diversion works, further demonstrates the placeholder nature of Application 29657.

B. The Applicant Has Not Made Progress on the Application.

The lacking information is in substantial part is the same information that was lacking when the Division of Water Rights issued an Order Canceling Application 29657 on September 20, 2010. (AHO-129; “Order”).

For example, the Order states at ¶ 7: “On December 28, 2000, the Applicant documented its progress in developing a plan for meeting the County's future water supply needs. No specific actions were identified for pursuing Application 29657.” In 2021, the Applicant still has not documented any specific actions in pursuing Application 29657.

The Order states at ¶ 22: “None of the protests have been resolved.” In 2021, one protest, that of East Bay Municipal Utility District is resolved, at EBMUD’s initiative.

The Order states at ¶ 23: “On November 5, 2008, the Division requested a demonstration that the Applicant has, or will in the reasonable future be granted, access and use of the Freeport facility. (See Wat. Code § 1775, et seq.) The Applicant was advised that the application may be rejected if access could not be secured.” In 2021, there is no access.
The Order states at ¶ 25: “On October 8, 2009, the Applicant documented that no field reconnaissance activities had been conducted.” In 2021, there have been no such activities.

The Order also states at ¶ 25: “The Applicant did not identify any measures, such as bypass flows, necessary for protection of biological resources.” In 2021, the Applicant still has proposed no such measures.

In summary, in 2000, the Applicant had made no progress on any actions to advance Application 29657. In 2010, the Applicant had not made progress specific to the application since 2000. In 2014, the only progress the Applicant had made since 2010 was the production of a contested WAA. 2021, seven years after the fourth amended application and three decades since the initial application, begins the fourth decade of lack of progress in prosecuting Application 29657.

C. The Applicant Consistently Conflates the Preconditions for Progress on the Application with Progress on the Application Itself.

Applicant’s witness Mr. Zidar (SJC-1) at ¶ 3 introduces his testimony by saying: “My testimony details (1) the background and foundational planning efforts to put the water that is the subject of Application 29657 to beneficial use…; and (2) the considerable work that has been undertaken since 2014 to further design both intra- and inter- regional physical facilities and to further test and implement operational concepts….” The actions and documents he discusses in the remainder of his testimony is consistent with this introductory description: it is background and foundational material and planning efforts antecedent to prosecution of Application 29657, not prosecution of Application 29657 itself. It might be arguable that failure to complete such antecedent actions would demonstrate lack of diligence. However, they do not initiate, or even commit to, construction of works or use of a single drop of water under a water rights application.

The sole document specific to Application 29657 on which the Applicant relies to demonstrate progress is a ten-year old general feasibility study it produced in 2011 (“Phase 1
Freeport Element of the American River Use Strategy, Final Draft Feasibility Study.” (SJC-3 and SJC-4).

Otherwise, the documents and activities the Applicant relies on to demonstrate progress are not specific to Application 29657. As Mr. Zidar stated on cross-examination by CSPA, it is the County’s contention that programmatic analysis is “in part” a demonstration of diligence. (HT, pp. 80:22-25, 81:1; AM Video 1:37:04-1:38:04). When asked, “Are there any bounds on the amount of time that programmatic analysis should suffice as diligence?” Mr. Zidar declined to specify an appropriate length of time. (HT, p. 81:2-17; AM Video 1:38:05-1:38:06).

1. With No Follow-Up in Ten Years, the Applicant’s 2011 Feasibility Study (SJC-3 and SJC-4) Does Not Demonstrate Progress.

The best specific technical information about a project to implement Application 29657 is contained in a planning document from August 2011 entitled “Freeport Element of the American River Strategy, Phase 1: Final Draft Feasibility Study. (SJC-3, SJC-4; “Feasibility Study”). On cross-examination by Mr. Ferguson, Mr. Zidar stated that the County had developed no operational plan for use of the Freeport facilities subsequent its 2011 Feasibility Study. (HT, p. 190:10-19; PM Video 1:37:00-1:37:34). On cross-examination by CSPA, County witness Mr. Zidar referred to this study for his best estimates of costs per acre-foot of water delivered under the application. (HT, pp. 82:22-25, 83:1-2; AM Video 1:40:27-1:40:43).

The Feasibility Study is simply that. It outlines a series of preliminary project alternatives, including conceptual and hypothetical features for treatment, conveyance, end use, recharge, and so forth. It makes no decisions, and only vaguely, in the executive summary, narrows the range of alternatives. While it includes technical information, it is high level. It is effectively a plan to make a plan, including a conceptual framework for executing NEPA and CEQA review.
The fact that the County relies on this ten-year-old Feasibility Study as the best source of technical information for project-specific information demonstrates the County’s lack of progress in prosecuting its application.

2. Programmatic Documents and Actions from Parallel or Related Processes Do Not Demonstrate Progress on the Application.

Mr. Zidar’s testimony is largely a recitation of actions and documents that the County has completed with little regard or reference to Application 29657. These include integrated regional conjunctive use (ICUP) planning, integrated regional water management (IRWM) planning, programmatic environmental review for various potential conjunctive use programs, and a pilot groundwater banking project in cooperation with East Bay Municipal Utility District (the Demonstration Recharge, Extraction and Aquifer Management or “DREAM” Project). None of these planning activities and documents is dependent on Application 29657 or features it as more than one contingent element. All of them could and likely will proceed without Application 29657, and the success or failure of none hinges on the application.

Mr. Buchman’s testimony deals with County’s actions in response to the 2014 Sustainable Groundwater Management Act (SGMA), which the County must complete pursuant to regulatory requirements completely independent of Application 29657.

Not one of these processes has reached a point that has placed Application 29657 in or even within sight of its critical path. Mr. Zidar cites these various processes and documents in anticipation of still further planning and action on these antecedent activities: “Additional time is needed for further planning, engineering, and review to permit projects currently in the IRWMP and SGMA Groundwater Sustainability Plan; and to gain consensus, pass needed assessments, and further develop the necessary partnerships.” (SJC-1, ¶ 13). It is notable that this description, which introduces the bulk of Mr. Zidar’s testimony, anticipates not the prosecution of Application 29657, but rather a further suite of antecedent actions. The
sentence that concludes ¶ 13 seems a non-sequitur: “The County has not stopped planning and continues to rely on and pursue Application 29657.” (Id.).

Mr. Buchman’s testimony (SJC-2) is even more explicit on how far off Application 29657 is on the planning horizon. At ¶ 7, he describes three types of projects for achieving groundwater sustainability:

- Planned Projects – Projects in this category are planned to be completed and online prior to 2040 and the projected supply is considered as offsetting the projected 2040 supply imbalance.
- Potential Projects – Projects in this category are currently in the planning stages and may move forward if funding becomes available. Potential Projects represent a “menu of options” for the Subbasin to achieve long-term sustainability and offset the remaining imbalance above and beyond implementation of the Planned Projects.
- Longer-term or Conceptual Projects

On cross-examination by CSPA on this section of his testimony, Mr. Buchman acknowledged that Application 29657 did not belong among “Planned Projects” (HT, p. 114:6-12; AM Video 2:21:26-2:21:47), those that, as cited supra, “are planned to be completed and online prior to 2040.” On the contrary, Mr. Buchman acknowledged that Application 29657 would more likely be categorized under “Potential Projects,” projects among a “menu of options” that “may move forward if funding becomes available;” or even as “Conceptual Projects.” (HT, pp. 114:16-25, 115:1-12; AM Video 2:21:26-2:22:59).

Like his colleague, Mr. Buchman depicts a long suite of intermediate steps prior to project-specific action on Application 29657.

D. The Applicant Has Not Shown Good Cause Why the Application Should Not Be Canceled.

The Applicant, through its witness testimony and through the opening statement of its counsel, maintains that it has shown good cause for which the State Water Board should not cancel Application 29657. None of the reasoning or arguments of the County to support this contention pass muster.
The Applicant represents that its production of programmatic documents under CEQA constitutes progress in prosecuting its application. We have discussed this reliance on programmatic actions, with no evident movement to project-level analysis, supra.

The Applicant represents the extent of the need of San Joaquin County for additional water supplies constitutes in part good cause for why the State Water Board should not cancel Application 29657.

The Applicant represents that selective passages in various water rights decisions and a water rights orders constitute good cause for why the State Water Board should not cancel Application 29657.

The Applicant represents that cancelation of the Application will irreparably harm the County’s effort to obtain water supplies from the South Fork American River under watershed of origin protections, and that this constitutes good cause for not canceling Application 29657.

We address below the representations we have not previously discussed.

1. The Applicant’s Need for Water Does Not and Cannot Constitute Good Cause for Thirty Years of Delay.

In his testimony at ¶ 55, Mr. Zidar states: “Surface water available to the County under Application 29657 is needed to address overdraft conditions. This chronic and systemic overdraft provides good cause for the Board to allow the County additional time to develop the information needed to process the Application.” On cross-examination by CSPA, Mr. Zidar reaffirmed this position. CSPA asked: “Does the extent of the need justify delay in pursuit of a water rights application?” Mr. Zidar replied: “I believe that's what I'm saying in the testimony.” (HT, p. 90:21-24; AM Video 1:51:49-1:51:58).

As a matter of law and of policy precedent, the AHO and the State Board cannot affirm the extent of need as a justification for unbounded delay in prosecution of a water rights application. Given the costs and the administrative and regulatory effort that application for a water right initiates, it is fair to say that no entity applies for a water right without believing that
it needs the water for which it applies. The rationale that unbounded delay is warranted by need is an open door for permanent inaction on every water right application.

    Perhaps more importantly, the AHO and the State Board cannot valorize irresponsible behavior that is admitted in acknowledging a condition of “chronic and systemic overdraft” by casting aside the rules governing diligent prosecution of a water rights application. Such condition did not come to pass by *force majeure*. It is the product of decades of choices and default operations.

2. In Water Rights Decisions 858, 893, 1356, and 1422, and Water Rights Order 2008-0045, the State Board and its Predecessors Made No Assurances to San Joaquin County Regarding Water Sourced in the American River.

    Mr. Zidar’s testimony states: “It has long been presumed that the American River water would be available to the County.” (SJC-1, ¶ 15). Mr. Zidar cites several water rights decisions and a water rights order to support his contention. Those documents from the State Board do not support the County’s presumption.

    First, Mr. Zidar cites to D-858, stating: “This decision directed the County to the American River as the source of supply for the County to meet current and future demands.” *(Id.*, ¶ 18). However, a reading of D-858 indicates no such “direction.” D-858 states at p. 51: “[F]rom the physical and engineering standpoints, there are no obstacles to prevent water from other sources being made available within the next few years to areas within the Mokelumne River Basin.” The factual presentation of water supplies alternative to the Mokelumne River does not confer regulatory or other “direction” of any kind. In fact, D-858 at p. 52 also notes that North San Joaquin Water Conservation District could be served by water from the Feather River. However, the County has not asserted that this observation constitutes “direction.” The conclusion that Mr. Zidar draws on behalf of the County that D-858 “directed” the County to the American River is unsupported.
Mr. Zidar at ¶ 19 next cites to D-893. He correctly cites the acknowledgment in D-893 (at p. 53) of the County’s need for additional water. He also summarizes the requirement in D-893 that the County be allowed time (now long past) to negotiate a contract with Reclamation for CVP water. (D-893, p. 53). However, anything “directed” in D-893 relative to the County stops there. D-893 denied the water rights applications of the County and various entities therein because Reclamation was uniquely suited to construct works for delivery of American River water to the County. Additionally:

The point or points of diversion under each of those applications [by County entities] is Folsom Dam and/or Nimbus Dam to which right of access has not been acquired by the applicants. Accordingly, issuance of permits to those applicants would be meaningless in view of the obvious necessity of contracting with the United States for a supply of water from the Federal facilities. …

The record is also abundantly clear in regard to the applications by California Water Service Company, City of Stockton, North San Joaquin Water Conservation District, and Stockton and East San Joaquin Water Conservation District that the applicants have no immediate plan or purpose to proceed promptly with construction and/or with the application to beneficial use of the water sought. In such cases the Board has little choice in the action to be taken since it is a settled principle that an application to appropriate is not a proper instrument to make a reservation of water for a development at an indefinite and uncertain time in the future.

(D-893 at pp. 54-55)

Nor does Mr. Zidar’s citation to D-1356 avail. Mr. Zidar states: “SWRCB Decision 1356 reiterated that San Joaquin County would be assured access to the American River.” This summarization is inaccurate. D-1356 at ¶ 19 assured that the American River Division of the Central Valley Project, including the newly authorized Auburn Dam, would prioritize San Joaquin County, along with Sacramento and Placer counties, for CVP water contracts before granting contracts from the American River Division to entities more remote. It did not, however, compel Reclamation to deliver any water to San Joaquin County at all.¹

¹ The State Water Rights Board subsequently deleted ¶ 19 following on reconsideration after
Mr. Zidar’s citation to D-1422 is inapposite. D-1422 allows Reclamation to deliver water captured in New Melones Reservoir anywhere in San Joaquin County. Decisions to limit such deliveries, as stated by Mr. Zidar, attach to decisions by Reclamation, not to D-1422.

Finally, Mr. Zidar’s cites Water Rights Order 2008-0045 to affirm that Reclamation is not likely to provide contract water to the County. He then quotes a statement in the Order affirming a general public interest in a reliable water supply for San Joaquin County. This general statement is even more vague than the statements in earlier water rights orders that the County alleges have “directed” the County to the American River.

In sum, the County has constructed two intertwined narratives over the last three decades. The first narrative is that the State Board has “directed” the County to appropriate water from the American River watershed. The second is that the State Board would be unfairly breaching its alleged direction and partial ownership by applying the rules regarding a water right application and its prosecution and canceling Application 29657. (Mr. Zidar, SJC-1 at ¶ 61: “[I]n the interest of equity and fairness, the American River should remain accessible to the County to meet long term demand….”). Neither of these narratives stands up to scrutiny. Both omit key facts regarding the County’s prior failures to meet the requirements for water rights applications and their prosecution.

In the absence of any other clear explanation in the State Board’s June 10, 2011 Order (AHO-146) reconsidering and reversing its September 30, 2010 cancelation of Application 29657, it appears to us that the State Board in 2011 accorded some weight to the County’s self-portrayal as victim. The AHO and the State Board must now recognize that the last ten years of deference has not yielded a satisfactory outcome.

Contra Costa Water District argued that any entity within the watershed of origin should be accorded the same priority to Auburn Dam water as San Joaquin, Sacramento and Placer counties.
3. Cancelation of Application 29657 Will Not Diminish Any Watershed of Origin Priority the County Is Able to Establish.

In his testimony, Mr. Buchman entreats the AHO and the State Board not to cancel Application 29657 by saying: “Should the SWRCB cancel the Fourth Amended Application, it will remove this watershed-of-origin source from any further consideration in a solution mix that could be implemented to meet the spirit, intent, and written legal requirements of SGMA.”

However, cancelation of Application 29657 would not change any status of priority relative to Central Valley Project and State Water Project exports that the County might be able to demonstrate under watershed-of-origin statutes. What would change, rather, is the priority date of a water right granted under a new application, relative to other in-basin users and uses.

Mr. Stork attempted to clarify this on cross-examination of Mr. Buchman, but the point was confused by inadvertent substitution of the term “area of origin” for the term “watershed of origin.” (HT, p. 109:9-25, 110:1-21; AM Video 2:14:40-2:17:16). The moment of clarity in this exchange was the re-affirmation that the issue was the priority date of the application when Mr. Buchman stated: “At the very least, if we can't -- if this Application was canceled and we have to refile at some point, in addition to the pretty significant expense, we're going to lose a significant amount of priority as well.” (HT, p. 110: 17-21; AM Video 2:16:58-2:17:16).

E. The Applicant Has Not Deployed Financial Resources to Prosecute the Application

The testimony of the Applicant’s witnesses describes the Applicant’s absence of funding dedicated to the prosecution of Application 29657.

In his testimony, Mr. Zidar cites “the seeming inability to be successful in obtaining bond funding from the State of California for the type of project proposed.” (SJC-1, ¶ 60). Further down in his testimony, Mr. Zidar cites further to delays in the efforts of the North San Joaquin Water Conservation District (NSJWCD) to upgrade its delivery works due lack of funding:
“Significant progress has been made in planning, permitting and design of related facilities. For example, the NSJWCD, with the support of the GWA, submitted for Proposition 68 monies in 2020 for the North Systems Improvements but the funds were not awarded.” (Id. at ¶ 63.) The County’s testimony refers to funding primarily in terms of grants and outside sources.

Applicant’s witnesses confirmed the lack of dedicated funding on cross-examination. When asked by CSPA whether the County had funding available to implement Application 29657, Mr. Buchman replied: “We do have planning money available through the County Flood Control District Zone Two. We have limited resources currently available there.” (HT, p. 115:17-21; AM Video 2:23:20-2:23:40). He added that a County also has a “letter of intent signed by the County and other contractors.” (Id.). When asked to clarify, Mr. Buchman affirmed that money “currently” on hand was for planning. (HT, p. 116:7-9; AM Video 2:24:04-2:24:11).

The County presents no evidence that it has raised, or even that it could raise, the money needed to prosecute Application 29657.

IV. THE AHO SHOULD RECOMMEND, AND THE STATE BOARD SHOULD CARRY OUT, CANCELATION OF APPLICATION 29657.

For the reasons described above, the AHO should recommend cancelation of Application 29657, and the State Board should carry out such cancelation.

There are ample legal grounds for this course of action.

The Applicant has failed to provide information relative to compliance with the Fish and Game Code. No project-level CEQA document is foreseeable. Basic nuts-and-bolts information about project works, places of use, and time to put water to use is absent.

The Applicant has not provided responsive information to the State Board under Water Code § 1275, and this warrants cancelation under Water Code § 1276. The Applicant has not provided information that is adequate for protest resolution, and this warrants cancelation under Water Code § 1335. The Applicant lacks a feasible plan and has deployed no evident

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financial resources to prosecuting Application 29657, and this warrants cancelation under 23 CCR § 840. The Applicant has not shown good cause for why the AHO and Division of Water Rights should grant additional time before canceling the application, particularly in consideration that this application has entered its fourth decade of pendency.

The State Board has been generous in its indulgence of San Joaquin County’s delay in the prosecution of Application 29657. The lack of evident progress, the lack of prospects for progress, and the compelling need to uphold the integrity of the water rights permitting process, require this indulgence to come to an end.

Executed this 28th day of October, 2021.

Chris Shutes
Water Rights Advocate
Consultant to
California Sportfishing Protection Alliance