



State Water Resources Control Board



Terry Tamminen
Secretary for
Environmental
Protection

Division of Water Rights
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Arnold Schwarzenegger
Governor

NOTICE OF PETITION TO CHANGE THE FISHERY AND WILDLIFE BYPASS FLOWS

PERMIT: 19312 (Application 27651) **PETITION FILED:** March 2, 2004

Notice is hereby given that the Eagle Hydro Partners (Petitioner) has filed a petition to change the fishery bypass flow rates under Permit 19312 (Application 27651). Petitioner is currently directly diverts 11.6 cubic feet per second (cfs) from Canyon Creek tributary to Middle Fork American River thence the North Fork American River in El Dorado County. The State Water Resources Control Board (SWRCB) will determine whether the permit should be amended and whether further conditions are needed in the permit to protect the environment, the public interest, and downstream water users. This notice provides a description of the existing project and the proposed change and also describes the procedure and time frame for submittal of protests against the petition. The Division of Water Rights (Division) will not accept protests that are directed against the underlying water right, rather than the change proposed by the petition. This notice may be viewed at the Division's website at www.waterrights.ca.gov. Any correspondence directed to the petitioner should be mailed to:

Eagle Hydro Partners
1850 Maple Avenue
San Martin, CA 95046

Description of Project

Petitioner directly diverts 11.6 cfs from Canyon Creek for hydroelectric power generation. Current fishery bypass conditions at the point of diversion reads as follow:

For the protection of fish and wildlife, permittee shall during the period: (A) from February 15 through May 15 bypass a minimum of 15 cfs, (B) from June 1 to February 14 a bypass minimum of 10 cfs. The total streamflow shall be bypassed whenever it is less than the designated amount.

Permit Information

County: El Dorado.
Applicant: Eagle Hydro Partners.
Source: Canyon Creek tributary to Middle Fork American River thence the North Fork American River thence the American River.
Point of
Diversion: within the SW¹/₄ of SW¹/₄ of Section 29, T13N, R10E, MDB&M.
Purpose of Use: Power.
Amount & Season: 11.6 cfs diverted from January 1 through December 31.
Place of Use: Powerhouse within the NW ¹/₄ of NE ¹/₄ of Section 30, T13N, R10E, MDB&M

Summary of Petition

The petitioner is participating in a fish monitoring program and seeks the modification of the existing fish and wildlife bypass flow term. For the purpose of the study, the California Department of Fish and Game proposed that the petitioner operate under the following bypass conditions:

February 15 through May 31 - 15 cfs or the natural, whichever is less;
June 1 to September 30 - 10 cfs or the natural, whichever is less; and
October 1 to February 14 - 4 cfs or the natural, whichever is less.

The second phase of the monitoring program is to commence in 2006.

Environmental Information

The lead agency will prepare the appropriate environmental documents for the project according to the California Environmental Quality Act (CEQA) and its guidelines, and will determine whether or not the project will cause a significant effect on the environment. If you are not filing a protest, but wish to submit information that indicates the project may cause a significant effect on the environment, please send this information to Steven Herrera; SWRCB, Division of Water Rights; P.O. Box 2000, Sacramento, CA 95812-2000. This information will be reviewed in accordance with CEQA.

PROTEST SUBMITTAL INFORMATION

Protest Requirements

A person may file a protest based on any of the following factors:

- Interference with prior water rights.
- Adverse environmental impact.
- Not in the public interest.
- Contrary to law.
- Not within the jurisdiction of the SWRCB.

All protests must clearly describe the objections to approval of the petition and the factual basis for those objections. There must be a clear link between the proposed change and the objection to its approval. If the objection is based on interference with prior water rights, the protest must describe specifically what injury would result if the petition is approved. In addition, the party claiming interference with prior rights must provide specific information describing the basis of the prior right, the date the use began, the quantity of water used, the purpose of use and the place of use. Please note that any water right permit issued by the SWRCB is subject to vested water rights and will include conditions to protect such rights.

If the protest is based on an allegation that the proposed change would not be within the SWRCB's jurisdiction, would not best conserve the public interest or public trust uses, would have an adverse environmental impact, or would be contrary to law, the protest must be accompanied by a statement of facts supporting the allegation.

For example, public interest protests should clearly indicate how the proposed change will affect the public; environmental protests should identify specific impacts and provide supporting recitals on the effect of the proposed change on plants, animals, fish, erosion, pollution, aesthetics, etc.; public trust protests must identify the navigable waters and public trust values that would be affected by the proposed change and how the change will impact public trust values.

All protests should include a description of any measures that could be taken to resolve the protest. The protest also must indicate the manner in which the protestant served upon the petitioner a duplicate copy of the protest.

If sufficient information is not submitted, the SWRCB may reject the protest or request that the protestant submit additional information. Protests of a general nature (not project specific) or protests that are inconsistent with constitutional or legislated state policy will not be accepted. A request for information or a request that studies be conducted does not constitute a protest.

Procedure for Submitting Protests

Protests should be submitted on standard protest forms available from the Division of Water Rights' website at www.waterrights.ca.gov/forms/ or upon request from the Division of Water Rights. A pamphlet that provides additional information relating to water rights and the procedure for filing protests is also available on the website or by mail. Any requests or the submittal of the completed protest form should be directed to the engineer listed as the contact person at the end of this notice. **A copy of the completed protest form must also be mailed to the petitioner.**

Protest Submittal Deadline

Protests submitted in response to this notice must be received by the Division by 3:00 p.m. on the 30th day after the date of this notice (the close of the protest period). Protests may be submitted by any of the following methods:

1. Mailed to Division of Water Rights; P. O. Box 2000, Sacramento, CA 95812-2000
2. Faxed to the Division at (916) 341-5400
3. E-mailed to the engineer listed below under the heading "Contact Person"
4. Hand-delivered to the Division office located at 1001 "I" Street, 14th Floor, Sacramento, CA

If you choose to fax or e-mail the protest due to the constraints of the noticing period, the fax or e-mail must be followed by timely delivery of an original signed copy, either personally or by mail, to the Division of Water Rights in order for the protest to be accepted. The SWRCB will

respond to all protests within 60 days of the final day to file a protest. **Protests not submitted by the close of the protest period will be subject to rejection.**

For good cause, the SWRCB may grant an extension of time to file a protest. It is the protestant's responsibility to contact the engineer listed below as "Contact Person" to request the extension prior to the end of the protest period.

Resolution of Protests

The applicant will have 30 days to respond to a protest once it is accepted by the Division. The protestant and the petitioner are expected to make a good faith effort to resolve the protest within 180 days from the close of the protest period.

This is a “major” petition for change (the subject diversion is 3 cubic feet per second or less by direct diversion or 200 acre-feet or less per year by storage) as defined by section 1704.4 of the Water Code. Therefore, any protest issues not resolved by the petitioner or by provisions of section 1703.6 of the Water Code will be decided by the Chief, Division of Water Rights, following a hearing.

CONTACT PERSON

To obtain additional information regarding this project, or to obtain copies of protest forms, or general information pamphlets, please contact Whalen Toy by phone at (916) 341-5408 or by electronic mail at wtoy@waterrights.swrcb.ca.gov. Information and protest forms are also available at the Division’s website: www.waterrights.ca.gov/forms/.

Date of Notice: **October 22, 2004**