



Alan C. Lloyd, Ph.D.  
Agency Secretary

# State Water Resources Control Board

## Division of Water Rights

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Arnold Schwarzenegger  
Governor

**NOTICE OF PETITIONS TO CHANGE POINTS OF DIVERSION,  
PLACES OF USE AND PURPOSES OF USE OF WATER  
TO DEDICATE WATER FOR ENHANCEMENT OF  
FISH AND WILDLIFE RESOURCES (WATER CODE SECTION 1707)  
and  
REQUEST FOR INVESTIGATION AND REPORT ON PROPOSED  
CHANGES OF POINTS OF DIVERSION, PLACES OF USE, AND  
PURPOSES OF USE OF DECREED WATER RIGHTS TO SUGAR CREEK  
SPECIFIED IN SCHEDULE B11 OF THE SCOTT RIVER DECREE**

**BASIS OF RIGHT:** Pre-1914 Appropriative And/Or Riparian Water Rights determined under the Scott River Decree (Siskiyou County Superior Court No. 30662, January 16, 1980)

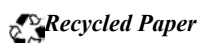
**PETITIONS FILED:** October 26, 2005

**STREAM SYSTEM:** Sugar Creek tributary to Scott River  
**COUNTY:** Siskiyou

Notice is hereby given that the Sugar Creek Flow Enhancement Participants – Tom and Beverly Tobias, Rick Barnes, Michael Thamer, William and Jennifer Marx, and Ed Gozzarino (hereinafter, “Petitioners”), filed petitions on October 26, 2005 pursuant to Water Code section 1707 to change the points of diversion, places of use and purposes of use of water under pre-1914 appropriative and/or riparian water rights. The Petitioners’ water rights are set forth in the Scott River Decree (Decree), Siskiyou Superior Court No. 30662, January 16, 1980, and any modifications to those rights must be accomplished pursuant to the requirements of the Decree. Consequently, the Petitioners seek approval of the petitions under section 1707 and have also filed a “Request for Investigation, Report and Recommendations” under paragraph 64 of the Decree seeking State Water Resources Control Board (State Water Board) review and recommendations concerning water right changes associated with the Sugar Creek Flow Enhancement Through Diversion Piping Project (Project).

The State Water Board will determine whether to approve the 1707 petitions and whether such changes should be conditioned to protect the environment or other legal users of water and will also determine whether to recommend to the Siskiyou County Superior Court that a Supplemental Decree be issued changing or modifying the Petitioners’ decreed water rights. This notice provides a description of the existing projects and the proposed changes, and describes the procedures and timeframe for filing protests against the petitions. The Division of Water Rights (Division) will not accept protests that are directed at the existing water rights, rather than the changes proposed by the petitions. Any correspondence directed to the Petitioners should be mailed to:

*California Environmental Protection Agency*



Sugar Creek Flow Enhancement Participants  
 c/o Robert E. Donlan  
 Ellison, Schneider & Harris  
 2015 H Street  
 Sacramento, CA 95814

This notice may be viewed and printed at the Division's website at [www.waterrights.ca.gov](http://www.waterrights.ca.gov).

### Description of Project

The Petitioners are listed in the table below. These persons have decreed surface water rights on Sugar Creek. The Petitioner's authorized purposes of use are irrigation from April 1 to October 15 for irrigation and incidental domestic and stockwatering throughout the year. The place of use of water is the acreage specified in Schedule B11 of the Decree.

<b>Sugar Creek Water Users Group</b>					
<b>Current Owner</b>	<b>Original Claimant</b>	<b>Diversion Number<sup>1</sup></b>	<b>Decreed Quantity<sup>2</sup> in cfs</b>	<b>Decreed Point of Diversion</b>	<b>Proposed Point of Diversion</b>
Thamer	Darbee	173-15-B11	1.52 - 3 <sup>rd</sup> priority 0.38 - 6 <sup>th</sup> priority 1.20 - 8 <sup>th</sup> priority 2.90 - surplus Total: 6.0	Darbee Ditch	Darbee Ditch
J. Marx	Davis	178a-15-B11	0.5 - 8 <sup>th</sup> priority	Davis - Peoples Ditch	Darbee Ditch
B. Marx	Peoples	178a-15-B11	1.5 - 8 <sup>th</sup> priority	Davis - Peoples Ditch	Darbee Ditch
Gozzarino	Bunting	181-15-B11	1.1 - 2 <sup>nd</sup> priority 0.70 - surplus Total: 1.8	Bunting Ditch	Darbee Ditch
Tobias-Barnes	Tobias-Barnes	179-15-B11	1.20 - 1 <sup>st</sup> priority 1.40 - 7 <sup>th</sup> priority 3.50 - 8 <sup>th</sup> priority Total: 6.1	Fay Ditch	Fay Ditch

The Petitioners seek to amend the pre-1914 and/or riparian water rights by dedicating a combined total of 5.8 cubic feet per second (cfs) during certain times of the irrigation diversion season to instream beneficial use. Some Petitioners, as identified below, will also forgo a part, or all, of their diversions at times to provide additional instream flows. The maximum quantity dedicated to instream flows is the amount set forth in the decree for each party.

<sup>1</sup> The Diversion Number refers to the description of the water rights as provided in Schedule B11 of the Scott River Decree.

<sup>2</sup> Petitioners propose modifications of all allotments of any priority.

## Summary of Petitions

Petitioners seek to modify all of their decreed water rights of every priority. The Project includes two components to increase instream flows in Sugar Creek. First, beginning in 2004, the Darbee Ditch piping project replaced the earthen Darbee Ditch. The Darbee pipeline carries the combined adjudicated flow in an 18-inch pipeline (delivers up to 7.8 cfs) for a length of approximately 4.8 miles. At the first junction, 3.0 cfs flows to Thamer through a 15-inch pipe (up to 4.7 cfs delivery) along the remaining Thamer alignment, for a distance of approximately 1.2 miles. An 8-inch lateral (delivers up to 4.2 cfs) to serve Marx and Gozzarino follows an existing dirt road alignment down the hill above their properties for approximately 1,400 feet. The Marx lateral is a 6-inch pipe (delivers up to 2.1 cfs) that runs about 600 feet. The Gozzarino lateral is a 6-inch pipe (delivers up to 1.8 cfs) that continues down the dirt road alignment for another 2,000 feet.

The Petitioners estimate that using the pipe system in lieu of the earthen canal conserves up to 5.8 cfs during certain times of the diversion season, through reduction or elimination of conveyance losses. This water remains instream and is the subject of the 1707 petitions of Thamer, Marx and Gozzarino, together with a request to add fish and wildlife enhancement as a purpose of use for these rights.

Pursuant to this project, the Darbee and Fay Ditches have been replaced with pipe, and the Marx and Gozzarino diversion locations have been relocated to the Darbee pipeline. Petitioners Marx and Gozzarino propose to add the Darbee Ditch point of diversion as an authorized point of diversion. The petitions state that Marx and Gozzarino have not abandoned their decreed points of diversion and conveyances, and intend at this time to preserve the original decreed conveyance facilities and conveyance easements.

Petitioners Thamer, Marx, and Gozzarino will also reduce or cease diversions during low flow periods, and will dedicate the forgone diversions to fish and wildlife enhancement uses in Sugar Creek. The specific timing and quantity of the instream uses will be cooperatively developed by the Department of Fish and Game (DFG) and the water users through an ongoing adaptive management program, which will be implemented and enforced through agreements between the DFG and the Petitioners pursuant to Section 1600, et seq. of the Fish and Game Code.

The second component of the project is changes in the water rights of the Petitioners. Under Water Code section 1707, the Petitioners seek authorization to dedicate a portion, or all, of the Tobias/Barnes water right, depending on time period and available flow, to instream beneficial uses within Sugar Creek. The Tobias/Barnes petition states that the specific instream flow dedications and diversion operations will be implemented through separate agreements or arrangements between the Sugar Creek Water Users Group and DFG through an ongoing adaptive management program, which will be implemented and enforced through agreements between DFG and the Petitioners.

The petitions filed under section 1707 specify that the instream place of use is Sugar Creek between the specific points of diversion of each Petitioner and the confluence of Sugar Creek with the Scott River.

**Petitioner Thamer:**

Point of Diversion: The point of diversion of Darbee Ditch is located at N 723,241', E 1,761,303', within NW $\frac{1}{4}$  of SE $\frac{1}{4}$  of section 15, T40N, R9W, MDB&M.

Proposed Change

In Point of Diversion: No change proposed.

Place of Use: 26 acres within SE $\frac{1}{4}$  of section 12, T40N, R9W, MDB&M  
59 acres within W $\frac{1}{2}$  of section 7, T40N, R8W, MDB&M.

Proposed Change

In Place of Use: Add the reach of Sugar Creek between the Darbee Ditch and the confluence of Sugar Creek and the Scott River. N 723,241', E 1,761,303' to N 733,150', E 1,774,112'.

Purpose of Use: Irrigation.

Proposed Change

In Purpose of Use: Add Fish and Wildlife Enhancement.

**Petitioner Gozzarino:**

Point of Diversion: N 728,454', E 1,769,733', within the NW $\frac{1}{4}$  of SW $\frac{1}{4}$  of section 12, T40N, R9W, MDB&M.

Proposed Change

In Point of Diversion: Add N 723,241', E 1,761,303', within the NW $\frac{1}{4}$  of SE $\frac{1}{4}$  of section 15, T40N, R9W, MDB&M.

Place of Use: 32 acres within NE $\frac{1}{4}$  of section 12, T40N, R9W, MDB&M.

Proposed Change

In Place of Use: Add the reach of Sugar Creek between the Darbee Ditch and the confluence of Sugar Creek and the Scott River. N 723,241', E 1,761,303' to N 733,150', E 1,774,112'.

Purpose of Use: Irrigation.

Proposed Change

In Purpose of Use: Add Fish and Wildlife Enhancement.

**Petitioner Marx:**

Point of Diversion: N 727,349', E 1,766,400', within the NW $\frac{1}{4}$  of SE $\frac{1}{4}$  of section 11, T40N, R9W, MDB&M.

Proposed Change

In Point of Diversion: Add N 723,241', E 1,761,303', within the NW $\frac{1}{4}$  of SE $\frac{1}{4}$  of section 15, T40N, R9W, MDB&M.

Place of Use: 10 acres within SE $\frac{1}{4}$  of NE $\frac{1}{4}$  of section 12, T40N, R9E, MDB&M  
30 acres within the SE $\frac{1}{4}$  of NE $\frac{1}{4}$  of section 12, T40N, R9E, MDB&M.

Proposed Change

In Place of Use: Add the reach of Sugar Creek between the Darbee Ditch and the confluence of Sugar Creek and the Scott River. N 723,241', E 1,761,303' to N 733,150', E 1,774,112'.

Purpose of Use: Irrigation.

Proposed Change

In Purpose of Use: Add Fish and Wildlife Enhancement.

**Petitioner Tobias/Barnes**

Point of Diversion: N 728,021', E 1,768,669', within the NE¼ of SE¼ of section 11, T40N, R9W, MDB&M.

Proposed Change

In Point of Diversion: No change proposed.

Place of Use: Barnes: 141 acres within section 13, T41N, R9W, MDB&M.  
Tobias: 172 acres within section 11, T41N, R9W, MDB&M.

Proposed Change

In Place of Use: Add the reach of Sugar Creek between the Fay Ditch and the confluence of Sugar Creek and the Scott River. N 728,021', E 1,768,669' to N 733,150', E 1,774,112'.

Purpose of Use: Irrigation.

Proposed Change

In Purpose of Use: Add Fish and Wildlife Enhancement.

**Scott River Decree**

The Scott River Decree, paragraph 19, specifies the following:

Schedule B is divided into 40 independent tributary streams or stream groups named and designated as Schedules B1 through B40 as shown in the Table of Contents

Rights set forth in each of the 40 independent tributary streams or stream groups in Schedule B are independent of all of the rights in the other streams or stream groups in Schedule B. Exercise of rights in Schedule B will not have an effect on rights in Schedules C and D great enough to warrant reduction of diversions when rights in Schedules C and D are not being fulfilled; therefore the rights in Schedule B may be exercised independently, except that rights set forth in surplus priority class in Schedule B are junior in priority to all numbered priority classes in this decree and to the rights set forth in Paragraph 45, and diversion under said surplus priority class rights shall be terminated when any downstream rights except those in surplus class are not being satisfied.

The Scott River Decree, paragraph 45, specifies the following regarding instream water use on Scott River:

The U.S. Forest Service has a right to stream flow in the Scott River measured at the USGS gage below Fort Jones in the following amounts for instream use for fish and wildlife within the Klamath National Forest.

Period	Allotment, in cfs
January	200
February	200

March	200
April	150
May	150
June 1-15	150
June 16-30	100
July 1-15	60
July 16-31	40
August	30
September	30
October	40
November	200
December	200

These amounts are necessary to provide minimum subsistence-level fishery conditions including spawning, egg incubation, rearing, downstream migration, and summer survival of anadromous fish, and can be experienced only in critically dry years without resulting in depletion of the fishery resource.

The priority of such right is equal and correlative with first priority rights in Schedule D4. The allotment will be considered satisfied when the flow on the particular day equals or exceeds the allotment or the average flow past the gage during the preceding 10 days equals or exceeds the allotment.

In addition to the allotment above, the U.S. Forest Service has a right to stream flow in the Scott River measured at the USGS gage below Fort Jones in the following amounts for instream uses within the Klamath National Forest for incremental fish flows and for recreational, scenic, and aesthetic purposes:

<b>Period</b>	<b>Allotment, in cfs</b>
January	226
February	226
March	226
April	276
May	276
June 1-15	134
June 16-30	184
July 1-15	132
July 16-31	152
August	47
September	32
October	96
November	158
December	226

The priority of such right is superior to all second priority class rights in Schedule D4 and inferior to all first priority class rights in Schedule D4.

The allotment will be considered satisfied when the flow on the particular day equals or exceeds the allotment or the average flow past the gage during the preceding 10 days equals or exceeds the allotment.

### **Environmental Information**

DFG is the lead agency for the Project under the California Environmental Quality Act (CEQA), and is responsible for ensuring compliance with CEQA and its guidelines. DFG determined that the Project is exempt from CEQA pursuant to CEQA Guidelines §§ 15307, 15308. The State Water Board has its own independent obligations under CEQA and will determine the appropriate CEQA documentation, or if the project is exempt from CEQA, prior to taking any final action on the petitions. If you are not filing a protest, but wish to submit information concerning the potential environmental effects of the petitions, please send this information to the lead agency and also send a copy to Steven Herrera, State Water Resources Control Board, 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 State Water Board.

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.

If the protest is based on an allegation that the proposed change would not be within the State Water Board'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 adversely affect the public; environmental protests should identify specific adverse environmental impacts and provide supporting information demonstrating the adverse impacts 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 adversely 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 Petitioners a duplicate copy of the protest.

If sufficient information is not submitted, the State Water Board 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/](http://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 Petitioners.

### **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. Emailed 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 State Water Board 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 State Water Board 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 Petitioners will have 30 days to respond to any protests accepted by the Division. The protestant and the Petitioners are expected to make a good faith effort to resolve the protest within 180 days from the close of the protest period. Unresolved protests may be decided by the Board or Chief of the Division 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 Katherine Mrowka by phone at (916) 341-5363 or by electronic mail at [kmrowka@waterboards.ca.gov](mailto:kmrowka@waterboards.ca.gov). Information and protest forms are also available at the Division's website: [www.waterrights.ca.gov/forms/](http://www.waterrights.ca.gov/forms/).

Date of Notice: **April 3, 2006**