State of California
State Water Resources Control Board
DIVISION OF WATER RIGHTS
P.O. BOX 2000, Sacramento, CA 95812-2000
Info: (916) 341-5300, FAX: (916)3415400, Web: http:://www.waterrights.ca.gov

PROTEST – (Petitions)

BASED ON ENVIRONMENTAL OR PUBLIC INTEREST CONSIDERATIONS
Protests based on Injury to Prior Water Rights should be completed on other side of form

APPLICATION 14804 PERMIT 11297 LICENSE 11118

We, California Water Impact Network and AquAlliance of (C-WIN) P.O. Box 148, Quincy, CA 95971 and (AquAlliance) P.O Box 4024, Chico, CA 95927 have read carefully a notice relative to a petition for ■ change or ❑ extension of time under APPLICATION 14804 of South Sutter Water District to appropriate water from Camp Far West Reservoir and Camp Far West Diversion to eight State Water Contractor agencies (the Dudley Ridge Water District, Kern County Water Agency, Napa County Flood Control and Water Conservation District, the Metropolitan Water District of Southern California, Antelope Valley-East Kern Water Agency, Oak Flat Water District, Palmdale Water District, and the San Bernardino Valley Municipal Water District).
It is desired to protest against the approval thereof because to the best of our information and belief the proposed change/extension will:

1. not be within the State Water Resources Control Board's jurisdiction ❑
2. not best serve the public interest ■
3. be contrary to law ■
4. have an adverse environmental impact ■

State facts, which support the foregoing allegations:

C-WIN and AquAlliance understand that the primary purpose of this proposed transfer of surface water from South Sutter Water District to the State Water Project represents a fiscalization of water transfers (analogous to the "fiscalization of land use" where land use decisions are made by local governments based on how much tax base results from alternative types of development). Here, South Sutter Water District states in its Environmental Information attachment that: "Increased costs associated with the FERC relicensing process, the required Probable Maximum Flood (PMF), and other regulatory processes have resulted in the District considering a water transfer to aid in offsetting these large expenses in order to maintain their ability to provide an affordable water supply." The District's revenue stream from its existing ratepayer base would seem to be insufficient to sustain predictable and possibly recurring regulatory processes (such as FERC relicensing of its powerhouse). The District disclosed this motive for undertaking this transfer each of the last three years, from 2008 through the present.

We also note that one week prior to filing this petition, YubaNet reported on March 31, 2010, that, "…at least 10,000 acre-feet of supplemental water would be available from PG&E." "While NID [Nevada Irrigation District] is currently under contract until 2013 to sell surplus water to South Sutter,"according to director Scott Miller, the District is 'reviewing what it charges the Sutter County-based water district.'" C-WIN and AquAlliance request clarification from the petitioner and the State Water Board as to whether this public reference to a transfer of water in the same amount as South Sutter's submitted petition one week after this story appeared, is a re-transfer of water that South

Sutter will have purchased from Nevada Irrigation District, who in turn purchased it from Pacific Gas and Electric Company.

C-WIN and AquAlliance protest SSWD's petition for change of place of use for transfer under Water Code Sections 1330 (actually protesting "an application") and 1726 (f) ("commenting" which must be considered by SWB in deciding the disposition of the short-term transfer change of use petition). Our organizations protest this transfer because we believe it does not serve the public interest, is contrary to the California Water and Public Resources Codes, and would have an adverse environmental impact.

1) Transfer is not in the public interest: South Sutter Water District's proposed transfer of surface water from Camp Far West Reservoir to eight State Water Project contractors (as cited in the petition dated April 7, 2010) is not in the public interest for the following reasons:
    a. Groundwater substitution to replace transferred surface water supplies in the District will likely occur, though it is not disclosed in the petition. "Each year," states the District in its Attachment to Temporary Transfer Petition, "landowners receive supplemental surface water supplies as a result of [Camp Far West] Reservoir releases. Irrigation requirements above the supplemental surface water supply provided by the District are met through groundwater pumping within the District. The District operates the system's outflow structures to maintain surface water levels within delivery and drainage channels to facilitate deliveries upstream. The outflow structures during the 2010 proposed temporary transfer will be operated to maintain water levels at their historical levels. Therefore, because there will be no change in landowner or District operations, there will be no change in District outflow as a result of the proposed transfer." (page 4)

        This passage from the petition appears to describe retention of water for flood irrigation for rice fields in the District's jurisdiction. The District uses outflow structures to maintain water levels on the fields, but does not account for where the water on the fields to be controlled by outflow structures originally comes from for the growing season and when it is put there, especially during July through September, the hottest months of the growing season when surface evaporation will be at its greatest. The description of these operations is inadequate for the State Water Board to make a conclusive determination that the surface water transfer would not be replaced from some other source, including most likely groundwater. Development of Camp Far West Reservoir and its associated facilities in the 1950s was intended to offset groundwater elevation declines and reduce pumping costs for irrigators, similar to other reservoir projects of the times. Such a project is operated conjunctively with groundwater supplies. The District's description of "supplemental surface water supplies" strongly implies that the surface water is intended not as the sole source of water but to supplement other sources of water to District landowners, including their use of groundwater. According to Sutter County groundwater management plan background information from 2008, much of South Sutter WD's rice lands use a mixture of both surface and groundwater supplies, confirming this blending of two water sources; if one water source is sent away, more of the other will be needed if, as the District contends, cropping patterns are to remain unchanged. C-WIN and AquAlliance believe that, logically, groundwater substitution would have to occur since, as the District claims, "there will be no change in landowner or District operations" otherwise.

b. The District fails to demonstrate that the transfer will have little to no impact on other parties within or downstream of the District. Since some groundwater substitution must occur, and is not disclosed, the transferor, South Sutter Water District, must demonstrate, not merely assert, that "the cropping pattern within the District, delivery operations, and outflow operations will not change as a result of the proposed transfer," and that the transfer of surface water from the district "will have little to no impact on other parties within or downstream of the District."

Sutter County's groundwater management planning effort in 2008 found that southern Sutter County lands within the South Sutter Water District saw groundwater elevations fall variously from 5 feet nearest to the Bear/Feather River confluence to over 35 feet further from the confluence between 1912-13 and 2007. While not as serious a drop in groundwater elevation as occurs elsewhere in California, such decreases indicate that groundwater pumping costs are higher than they would be had Sutter County groundwater management policies protecting against the lowering of its water table. Removal of surface water supplies that offset demand for groundwater pumping is not in the public interest, since there are several different landowners in this area who would have to cope with declines in groundwater elevations. Their increased costs of pumping could have adverse effects on the local economy that go unexamined in the petition.

The petition fails to disclose probable third party impacts in the area of origin (South Sutter Water District and its environs) and the area(s) where delivery occurs. Even DWR acknowledges that all transfers have the potential to impact third parties (Unresolved Issues http://www.swpao.water.ca.gov/transfers/index.cfm#Unresolved%20Issues).

Evaporation of water will occur from the ground surface of the District's irrigated lands during July through September, when rice fields are flood-irrigated. The District's petition for temporary transfer provides no accounting of this evaporative loss and how much additional groundwater individual landowners would need to pump to make up for it.

Finally, an appropriate and responsible course of action that would obviate the District's perceived need to sell water through a temporary change petition for transfer would be to determine what the revenue and resource gaps are for its upcoming and current regulatory obligations and raise rates locally to defray these expenses. This course of action would be far more reasonable and responsible than relying on Delta pumping and groundwater substitution with their associated environmental impacts. The transfer proposal externalizes the District's costs of regulatory compliance onto nature using the water transfer market and other potential third parties. This is contrary to the public interest in protecting the public trust resources of the Delta and the public's stake in having readily accessible groundwater.

2) Transfer is contrary to law in California Water Code Sections 1725, and in Water Code Section 1745.10.
   a. Water Code Sections 1725. Transfers by South Sutter Water District with the same terms, timing of release, transfer amounts, additional purposes of use, and proposed new users have occurred serially since 2008, as shown in the table below.

Cumulating Petitions for Temporary Changes

Year of Petition	Application Number	Applicant/ Water Right Holder	Average Diversion Rate of Transfer (cfs)	Changed Point of Rediversion	Changed Place of Use	Changed Purpose of Use	Proposed New User(s)	Transfer Amount	Term of Transfer	Timing of Releases
2008	14804	South Sutter Water District	100	Banks PP and Barker Slough PP	Additional place to include State Water Project service areas served by export facilities; transfer water to be placed for beneficial use within Kings, Kern, Los Angeles, Napa, Orange, San Diego, Riverside, San Bernardino, and Tulare counties	Addition of municipal and industrial use	Dudley Ridge WD, Kern County Water Agency, Napa County Flood Control & WCD; MWDSC; San Bernardino Valley MWD; Antelope Valley East Kern WA; Palmdale WD; Tulare Lake Basin WSD	up to 10,000 AF	July 1, 2008 - June 30, 2009	July - September 2008
2009	14804	South Sutter Water District	100	Banks PP and Barker Slough PP, Jones PP, Contra Costa Canal	Service areas of the Central Valley Project(Application 5626) and State Water Project (Application 5630)	Addition of municipal and industrial use	2009 Department of Water Resources/US Bureau of Reclamation Drought Water Bank; contractors in the 2009 DWB pool included: MWDSC, Kern County Water Agency, Napa County Flood Control & WCD, and San Bernardino Valley MWD	up to 10,000 AF	July 1, 2009 - June 30, 2010	July - September 2009
2010	14804	South Sutter Water District	150	Banks PP and Barker Slough PP	Service area of the State Water Project (Application 5630)	Addition of municipal and industrial use	Dudley Ridge WD, Kern County Water Agency, Napa County Flood Control & WCD; MWDSC; San Bernardino Valley MWD; Antelope Valley East Kern WA; Palmdale WD; Oak Flat WD	up to 10,000 AF	July 1, 2010 - June 30, 2011	July - September 2010

C-WIN and AquAlliance believe that the proposed 2010 water transfer by South Sutter Water District is evidence of a long-term water transfer to the State Water Project that masquerades as a series of short-term, temporary transfers. Water Code Section 1735 states: “The board may consider a petition for a long-term transfer of water or water rights involving a change of point of diversion, place of use, or purpose of use. A long-term transfer shall be for any period in excess of one year.” The sequence of transfers undertaken by South Sutter Water District shown above indicates that by approving a temporary change petition from the District in 2010, the State Water Board would fail to recognize that the District is actually engaging in a long-term transfer that should be the subject of a petition under Section 1735, in violation of the intent of the short-term transfer provision of Water Code Section 1725. This is a reasonable presumption because currently the State Water Project’s storage capacity, despite a wet winter in 2010, remains well below capacity because of other priorities for flows from the Feather River. Department of Water Resources meteorologists and planners have stated publicly that it will take at least another year or two for Lake Oroville to fill from winter snowmelt and runoff. The District, in its 2009 petition, characterizes the 2008 transfer as a “2008 Pilot Water Transfer (Pilot Transfer).” Following the Pilot Transfer of 2008, the District collected data on the transfer and included information from it in its 2009 transfer petition, that time under the auspices of the 2009 Drought Water Bank, such as Tables 1 and 2 about fish flow releases and monthly flow rates at the Bay-Delta settlement agreement weirs. The District further acknowledges in its 2010 environmental information that it engaged in “similar transfers in 2008 and 2009.” This succession of one-year transfers, while nominally legal, add up to a consistent pattern over three years of nearly identical transfers from the same seller’s facilities to the same changed points of rediversion (State Water Project pumping and conveyance facilities) to nearly identical customers. In our view, the fact that the 2009 transfer was to the State Water Project and Central Valley Project service areas is immaterial—they include seven of the eight water contractors that are identified as transfer recipients in both 2008 and 2010, and four (Metropolitan, Kern County Water Agency, Napa County Flood Control and Water Conservation District, and San Bernardino Valley Municipal Water District) appear among the 2009 Drought Water Bank pool of transfer recipients a year

ago. The District states in its 2010 petition (page 4) that "under the proposed transfer, the Diversion Dam would be modified in a similar manner as under the 2009 [Drought Water Bank] transfer to allow for the flow rate of release needed to satisfy up to 10,000 AF of transfer water." Finally, the CEQA exemption based on a declaration of drought emergency by the Governor was disallowed by Alameda County Superior Court in March 2010, and the remedy includes a requirement that DWR prepare an environmental review of the 2009 Drought Water Bank transfers. We are also aware that DWR and the US Bureau of Reclamation plan a "water transfer program" for 2010 through 2011 (and which is modeled on the 2009 Drought Water Bank which was successfully challenged), so it is a reasonable presumption that South Sutter Water District, absent a change in its fiscal situation, is likely to prepare another short-term transfer petition to provide water to this water transfer program. We urge the State Water Board to reject the short-term water transfer petition and advise the petitioner to file a long-term transfer petition instead.

b. <u>The proposed transfer, with nearly identical transfers having occurred in each of the two preceding years, evidences a long-term transfer subject to review under the California Environmental Quality Act.</u>

Following on the reasoning with respect to the Water Code, C-WIN and AquAlliance allege that the proposed short-term transfer by South Sutter Water District to the State Water Project contractors would represent another increment of a "project" that is exempted from CEQA improperly. We believe that, unlike in the case of *Sierra Club v. The West Side Irrigation District* (2005), the current transfer should be treated as a long-term transfer (one that represents a transfer of water recurring over a period greater than one year), and is subject to CEQA review. The District's proposed and actual transfers in 2008 through 2010 constitute a single project put forward by a single independent agency; environmental review has been evaded because these transfers were filed incrementally as temporary short-term petitions; only a single water right (application 14804) is involved; each incremental petition would be for identical "up to" amounts to be transferred (10,000 acre-feet); and the petitions have essentially the same terms, identified in the table above. In addition, with the vacation of the CEQA exemption on the 2009 Drought Water Bank, there really is no programmatic coverage under CEQA for transfers like this. Cumulative effects of this and other transfers have been poorly handled or not examined at all. We believe this would represent an abuse of the State Water Board's discretion to approve this project as a short-term temporary transfer, and would violate the California Environmental Quality Act, which requires that projects be treated as "the whole of an action," and that the environmental effects of the action be fully disclosed to the public prior to its conduct.

Individual, if serial, transfers, such as South Sutter Water District's, confirms for C-WIN and AquAlliance the desperate need for the California Department of Water Resources to collaborate with the State Water Resources Control Board (as the steward of California's public trust resources) to undertake a systematic programmatic environmental review under CEQA of water transfer programs that would transfer water from Sacramento Valley sources across the Delta to San Joaquin Valley and southern California users. This is necessary to gain a greater understanding of the "whole" of the actions involved in water transfers and their incremental, cumulative, and perhaps growth-inducing effects.

c. The proposed transfer is contrary to Water Code Section 1745.10. South Sutter Water District is located mostly in southern Sutter County. Sutter County has undertaken, but has not yet adopted, a groundwater management plan for its territory. Section 1745.10 prohibits surface water transfers that rely on groundwater substitution when there is either no groundwater management plan present for the affected area, or when (if no groundwater management plan is present) the local water supplier (in this case, South Sutter Water District) determines that the water transfer will not create or contribute to long-term overdraft conditions in the affected groundwater basin. C-WIN and AquAlliance protest this short-term transfer petition from the District because the District fails to demonstrate that no long-term overdraft conditions are present in its affected groundwater basin. As noted, there is no adopted groundwater management plan in Sutter County. We refer the State Water Board to the Sutter County data on groundwater elevations cited above. While not on the scale of other areas of California, the data indicate a long-term overdraft condition exists. We believe the burden of explaining the drop in groundwater elevations lies with South Sutter Water District in this instance given reasonably available public information about this subject. The State Water Board should not allow this petition, or a long-term transfer petition, to proceed without such analysis.

3) The proposed transfer would have adverse environmental impacts.
   a. The petitioner requests approval for a year-long transfer when fisheries problems in the Bear River continue year-round. Water temperature, flow timing (particularly with respect to attraction flows), and water level issues have been identified by the petitioner and with two previous years of nearly identical transfer activity, these fishery issues need CEQA review under the aegis of a long-term transfer petition.
   b. Cumulative effects of lost Delta outflows. The District would add Banks Pumping Plant and Barker Slough Pumping Plant to its points of rediversion under this petition. C-WIN and AquAlliance protest these proposed rediversion points because the transfer generates inflows to the Delta, but no net outflows to Suisun Bay, Suisun Marsh, and San Francisco Bay. Instead, the transfer is "accounted for" as water that proceeds through the Delta Cross Channel, and contributes to the reverse flows in Old and Middle River that contribute to fish entrainment at Banks Pumping Plant, before being exported to the recipients of the water south of the Delta. However small a contribution these transfer water flows make on a percentage basis to Delta inflow, they are nonetheless cumulatively subtracted from Delta outflows. Loss of Delta outflow means that the low salinity zone in the Delta is smaller than it would otherwise be, and therefore critical habitat for estuarine species, including striped bass young of the year and Delta smelt, may be adversely affected by increased density-dependence relationships.

      These and other cumulative effects must be analyzed as part of a programmatic environmental review under the California Environmental Quality Act to ensure all significant environmental effects of cumulating are analyzed.

   c. There may be habitat conservation plans and natural community conservation plans in the vicinity of transfer flows that could be affected by the proposed transfer.

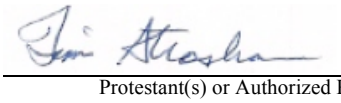
4) Conclusion

C-WIN and AquAlliance urge the State Water Board that the requested transfer should be denied as a temporary transfer under Section 1725 of the Water Code. As a long-term transfer under Section 1735 of the Water Code, the proposed transfer should be analyzed under CEQA. The CEQA analysis should evaluate cumulative effects, not merely incremental effects.

Under what conditions may this protest be disregarded and dismissed? Not known at this time.

A true copy of this protest has been served upon the petitioner South Sutter Water District, c/o Marc Van Camp, Agent, 1771 Tribute Road, Suite A, Sacramento, CA 95814

Date 2 JUNE 2010



Protestant(s) or Authorized Representative sign here

Date 2 JUNE 2010

Protestant(s) or Authorized Representative sign here

Protests MUST be filed within the time allowed by the SWRCB as stated in the notice relative to the change or such further time as may be allowed.

Proof of Service

I hereby certify that on this day, June 2, 2010, I, Tim Stroshane, have placed in first class mail at Albany, California, a true copy of this comment letter mailed to:

South Sutter Water District
c/o Marc Van Camp
MBK Engineers
1771 Tribute Road, Suite A
Sacramento, CA 95814

Tim Stroshane