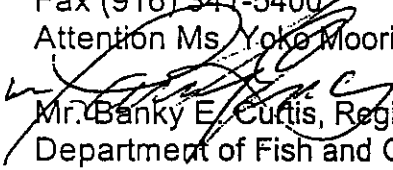


M e m o r a n d u m

To: Ms. Vicky Whitney, Chief
Division of Water Rights
State Water Resources Control Board
Post Office Box 2000
Sacramento, CA 95812-2000

Date: January 14, 2005

Fax (916) 341-5400
Attention Ms. Yoko Mooring

From:  Mr. Banky E. Curtis, Regional Manager
Department of Fish and Game
Sacramento Valley Central Sierra Region
1701 Nimbus Road, Suite A
Rancho Cordova, CA 95670

Subject: Protest of Water Application 5648X07 (Partial Assignment) and Application 31523 of Lake Alpine Water Company and the County of Alpine to Divert Water From Bear Creek, Tributary to Bloods Creek, thence the North Fork Stanislaus River in Alpine County.

The Department of Fish and Game's (DFG) interest in this petition is based on its status as trustee agency for California's fish and wildlife resources. The DFG's right to protest is based on State Water Code § 1330, Title 23 California Code of Regulations (CCR) § 843 and other provisions of law.

Basis of Protest

The DFG is protesting this application because appropriation of the proposed quantity of water will result in reduced streamflow, thus potentially impacting water quality, and both aquatic and riparian resources during the periods of low flow in Bear Creek. Downstream of the point of diversion, Bear Creek, Bloods Creek and the North Fork Stanislaus River support populations of rainbow trout (*Oncorhynchus mykiss*); brown trout (*Salmo Trutto*); brook trout (*Salvelinus fontinalis*); and potentially mountain yellow-legged frog (*Rana muscosa*).

Project Description

Lake Alpine Water Company and the County of Alpine have filed the following actions with the State Water Resources Control Board (SWRCB): (1) a petition for partial assignment of State-filed Application 5648 held by the SWRCB and accompanying application. This has been assigned Application 5648X07. (2) A petition to change the place and purpose of use and add a point of diversion on State-filed Application 5648; and (3) Application 31523. to appropriate water by permit as a backup in the event the petition for partial assignment of State-filed Application 5648X07 and petition for change of State filed Application 5648 are not approved.

Lake Alpine Water Company and the County of Alpine propose a direct diversion from Bear Creek at the existing Bear Lake in Bear Valley of 0.78 cubic feet per second (cfs) (not to

exceed a total of 175 acre feet (af) per year) and 220 af of storage. The total combined amount taken by direct diversion and storage during any one year will be 395 af. The proposed season of diversion is October 1 of each year to July 31 of the succeeding year.

Protest Dismissal Terms:

The Department will be in a position to withdraw our protest of these applications should the following conditions be met:

1. No diversion shall occur under these applications until the applicant or the State Water Resources Control Board (as required under Water Code Sections 1243.5 and 1375D) determines that water is available during all water year types for the diversion under Application 5648X07 (Partial Assignment) and Application 31523.
2. For the protection of fisheries, wildlife, and other instream uses in Bear Creek and Blood Creek, diversions under this permit shall be subject to maintenance of minimum bypass flow. A measure of flow shall be bypassed around the point of diversion during the allowable diversion season that will be of sufficient quantity and quality to maintain in good condition, any fisheries and wildlife resources that would exist in downstream reaches under unimpaired flows. Determination of the bypass flow must be based on site-specific biological investigations conducted by the permittee in consultation with DFG staff. No diversion shall occur under this permit until DFG and the permittee have agreed on the minimum bypass flow. In the absence of site-specific data or a DFG approved minimum bypass flow, no water shall be diverted if the stream flow at the point of diversion is 2 cfs or less.
3. No water shall be diverted under this permit until permittee has installed a device, satisfactory to the State Water Resources Control Board, which is capable of measuring the bypass flow required by the conditions of this permit. Said measuring device shall be properly maintained.

NOTE TO APPLICANT: Prior to any construction work within or adjacent to Bear Creek, notify the Department pursuant to Section 1602 of the Fish and Game Code and obtain a Lake or Streambed Alteration Agreement (LSAA) from the Department. Visit the Department's Web Site at <http://www.dfg.ca.gov/1600> or call (916) 358-2929 to obtain the notification forms for LSAA.

If you have questions regarding this matter, please contact Mr. Gary Hobgood, Environmental Scientist, at (916) 983-6920 or Mr. Kent Smith, Habitat Conservation Planning Supervisor, at (916) 358-2382.

cc: Lake Alpine Water Company and
The County of Alpine
c/o Daniel F. Gallery
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Mr. Gary Hobgood
Mr. Stafford Lehr
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