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SACRAMENTO

PROTEST

Based on Environmental Considerations, Public Interest, Public Trust, and Other Issues.

(Protests based on prior rights or prior filed applications should be completed on other side of form.)

APPLICATION 29449

1. I, (We) Konrad Fisher
Name of Protestant(s)
of 1721 Court Street, Redding, California 96001, (530) 244-0909 have read carefully a
Mailing address and zip code of protestant(s) Telephone Number
copy of, or a notice relative to, Application of Doug Cole, Heidi Cole, Norman Cole
Name of applicant
& Caroline Cole to appropriate from Stanshaw Creek
Name of source
at a point 2,500 feet W, 1,500 feet NE Corner 785,300'N, 1,589,300'E Cal Coord. Zone 1
Describe location of applicant's point of diversion
(§33 T.13N R. 6E, H.B.M.)

2. I, (We) protest the above application on:

ENVIRONMENTAL ISSUES, ETC.:

The appropriation will not best conserve the public interest, will have an adverse environmental impact and/or will adversely affect a public trust use of a navigable waterway.

- (a) Public interest protests should clearly indicate how the appropriation will affect the public.
- (b) Environmental protest should identify specific impacts and provide supporting recitals on issues such as: plants, animals or fish affected, erosion, pollution, aesthetics, etc.
- (c) Public trust protests must identify the navigable waters to be affected and how the project will impact public trust values.*

Protests of a general nature (not project specific) or opposed to constitutional or legislated state policy will not be accepted. A request for information or for studies to be conducted is not a protest.

OTHER ISSUES:

The appropriation will be contrary to law, will require access rights, will not be in Board's jurisdiction, or concerns other issues.

Facts and, if applicable, points of law which support the foregoing allegations are as follows: (See Attachment, Item 2.)

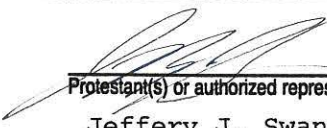
3. Under what conditions may this protest be disregarded and dismissed? (See Attachment, Item 3.)
(Conditions should be of a nature that the applicant can address and either accept or submit mitigating measures.)

* For the purpose of filing a protest, navigable waters include streams and lakes that may be seasonally navigable in small recreational watercraft.

Date: March 15, 2000

Notes: Attach supplemental sheets as necessary.

Protests must be filed within the time specified in the notice of application.


Protestant(s) or authorized representative sign here

Jeffery J. Swanson, Attorney
Type or print name and title of representative, if applicable

2515 Park Marina Drive, Suite 102
Street Address

Redding, California 96001
City and State

(530) 225-8773

Telephone Number

**ATTACHMENT TO PROTEST OF APPLICATION 29449
BY KONRAD FISHER
(BASED ON INJURY TO ENVIRONMENTAL CONSIDERATIONS, ETC.)**

ITEM 2:Relevant facts:

- 1) Stanshaw Creek is tributary to the Klamath River. During certain times of the year, Stanshaw Creek is navigable by small recreational watercraft. The Klamath River is also navigable by watercraft.
- 2) Protestant has personally observed salmon at the mouth of Stanshaw Creek that were unable to migrate upstream due to low water levels in the creek. Protestant is willing to provide a sworn declaration or to testify in this regard. Applicants' diversions will likely have a negative impact on the Stanshaw Creek fishery.
- 3) Michael David Fellows, caretaker for Protestant's family ranch, has personally observed salmon in Stanshaw Creek between the mouth and the point where the creek passes beneath State Highway 96. The viability of a fishery in that stretch of the creek is affected by Applicants' appropriation in that it reduces creek flows. Mr. Fellows is willing to provide a sworn declaration or to testify in this regard.
- 4) Lucille Albers, a 69 year old Native American who grew up in the vicinity of Stanshaw Creek has personal recollections of salmon in the creek when she was younger. Ms. Albers is willing to provide a sworn declaration or to testify in this regard.
- 5) The California Dept. of Fish & Game is investigating the feasibility of restoring the anadromous fishery in Stanshaw Creek above its intersection with Highway 96. Protestant is informed that DFG has submitted a letter to the SWRCB regarding the proposed project. The application should not be decided until DFG has evaluated the fish passage project and minimum flows required for instream purposes.

Legal Authority: The State Water Resources Control Board has broad authority to establish minimum flows and take other measures needed for protection of fisheries and other public trust resources. That authority is provided by Article X, Section 2 of the California Constitution, Water Code Sections 100 and 275, the public trust doctrine as articulated by the California Supreme Court in *National Audubon Society v. Superior Court*, (1983) 33 Cal.3d 419, 189 Cal. Rptr. 346, and Water Code Sections 1243 and 1253.

ITEM 3 (dismissal conditions):

This protest may be dismissed under the following conditions: (1) guaranteed minimum year-round stream flows in Stanshaw Creek to enhance the anadromous fishery and to ensure fish survival throughout the dry season, (2) Applicants' agreement to stop diverting water at any time to ensure minimum stream flows are satisfied, (3) Applicants' contribution of funds to restore and enhance the Stanshaw Creek anadromous fishery and to assist with the proposed fish passage project under Highway 96, (4) Applicants must submit evidence to show the availability of water in Stanshaw Creek in excess of those needed for the instream fishery and existing riparian rights and (5) Applicants must submit evidence to support their claimed pre-1914 water right, including evidence of continuous use.