

CINNAMON RANCH HYDROELECTRIC

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July 8, 2010

Mr. Jeff Parks
Division of Water Rights
State Water Resources Control Board
P.O. Box 2000
Sacramento, CA 95812-2000

Via e-mail: jparks@waterboards.ca.gov

RE: Friends of the River's Petition for Reconsideration for the Cinnamon Ranch Hydroelectric Project, FERC Project 6885

Dear Mr. Parks:

This letter is in response to the Friends of the River's petition for reconsideration and request for stay of the water quality certification for the Cinnamon Ranch Hydroelectric project. The owner and agents of the Cinnamon Ranch Hydroelectric project do not believe the petition is valid and wish to respond within the 20 days provided (Cal. Code Regs., tit. 23, § 3867.1). The petitioner says that they have sent copies to the Executive Director and the applicant, Richard Moss, but the applicant did not ever receive a copy of the petition.

The Cinnamon Ranch Hydroelectric Project is several years into the FERC relicensing process and there have been numerous public notices, public meeting, site tour, and numerous public filings with the FERC regarding the project. The FERC has already produced and posted an environmental assessment of the project. The water quality certification has been the final step of the process for relicensing of this existing project. The process has been lengthy and expensive for the applicant, and every opportunity for the agencies and the public to participate and respond has been provided. With the exception of the US Forest Service and the local Indian tribe, and after dozens of phone calls and letters, there has been little or no response to the relicensing of this project. After 40 years of caring for and managing a system that has been in operation for nearly 150 years, we take exception to the use of Google Earth to base the environmental assessment for a petition of reconsideration.

We believe that the State Water Resources Control Board (SWRCB) has followed the required process, and did not issue the WQC without consideration. We know for a fact that the Lahontan Regional Water Quality Control Plan was used to evaluate the project. Even with the efforts made by the SWRCB, we believe there are errors in the WQC statements and conditions for the project. In particular we do not believe that the SWRCB adequately indicates that the hydroelectric project is secondary to the irrigation system itself. The water rights for irrigation for Pellisier, Middle and Birch are all pre-1914 water rights and were in existence before the SWRCB itself and do not include any requirements for bypass flows. The water conveyance system for irrigation was constructed in the 1800's. What the Friends of the River do not understand is that unless a water conveyance system is provided in this area of the White Mountains, the water does not flow on the surface beyond the mouth of the canyon for more than a few days each year. Examples of creeks in the immediate area that do not flow beyond the mouths of their canyons are Rock, Falls, Willow and Jeffrey creeks. Subsurface water will maintain some vegetation, but will not support fish or wildlife. The Cinnamon Ranch hydroelectric project was constructed in 1960 to use the water already collected by the irrigation system, and after it leaves the powerhouse, the water is used for irrigation. With or without the hydroelectric project, the water is permitted for irrigation.

In addition to the information above, we believe the SWRCB has included several errors in the numbered articles below:

8. Statements of Water Diversion and Use. Included is information filed apparently in 1982. The applicant has regularly filed statements with the SWRCB and there are public records available of the water permits granted in 1876. The year-round diversion amounts listed may have been the amounts reported for that year, but do not reflect the latest or the average amounts used.
11. States the Department of Fish and Game (DFG) has introduced rainbow and brook trout to Birch Creek. We believe this is an error and do not believe the DFG was responsible for this and that they do not have any record of the introduction.
12. States that DFG periodically introduces cutthroat trout to Birch Creek under its fishery management and restoration program. This is an error. The DFG does not stock or maintain Birch Creek, and there are no records to show this.
14. States that insufficient data is available and information is needed to evaluate the health of aquatic resources in the three creeks for minimum bypass flows. The applicant already has permits for the use of these creeks for irrigation water, which do not include requirements for bypass flows. The hydroelectric project is secondary to the irrigation system that sustains the Cinnamon Ranch crops.
16. States that every applicant for a federal license or permit which may result in discharge into navigable waters to provide the licensing or permitting federal agency with certification that the project will be in compliance with specified provisions of the Clean Water Act. Pellisier, Middle and Birch Creeks are clearly not navigable waters and do not flow into any navigable waters. In an extreme flood event, they could flow

into the Owens River however the Owens River is not considered navigable waters of the United States by the FERC. For purposes of FPA section 23(b)(1), Commerce Clause streams are the headwaters and tributaries of navigable waters of the United States. Although the Owens River is navigable, it is located entirely within California and lacks a navigable interstate connection. Most of the water of the Owens River is diverted for use by the Los Angeles Department of Water and Power. The remaining water flows into Owens Lake, which does not have an outlet.

17. States the California Regional Water Quality Board has adopted basin plans for each watershed in the state. The Lahontan Region covers the project area and lists municipal and agricultural irrigation as some of the beneficial uses of the three streams. However, it does not list hydroelectric generation for Pellisier, Middle, Birch, Lone Tree, Cottonwood Canyon or Paiute creeks, all with installed economically viable hydroelectric generation pre-dating the plan. The only water source listed with hydroelectric potential on the plan is Milner Creek. We believe this was an oversight in the development of the plan that should be corrected.

The owner and agents of the Cinnamon Ranch Hydroelectric Project request that the stay of Water Quality Certification not be considered and that the Board consider the points brought to attention above.

Sincerely,

ORIGINAL SIGNED BY:

Donald L Moss

CC: Richard Moss
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Bishop, CA 93514

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