

# Memorandum

Date: February 19, 2009

To: Camilla Williams  
State Water Resources Control Board  
1001 I Street  
P.O. Box 2000  
Sacramento, CA 95812-2000

From: Department of Water Resources

Subject: Comments on the Petition for Reconsideration on 401 Water Quality Certification for the California Aqueduct Hydroelectric Project, Federal Energy Regulatory Commission, Project No. 2426

The Department of Water Resources (DWR) offers the following comments on the California Trout, Inc. (CalTrout) and Friends of the River (FOR) (collectively, Petitioners) Petition for Reconsideration and Request for Stay (Petition) regarding the Water Quality Certification (WQC) for the Re-Operation of Pyramid Dam for the California Aqueduct Hydroelectric Project, Federal Energy Regulatory Commission (FERC) Project No. 2426. For the reasons set forth below, DWR respectfully requests the State Water Resources Control Board (SWRCB) deny the petition for reconsideration and request for a stay.

As noted in the WQC, the flow regime proposed by DWR in its license amendment application to FERC was considered and developed to prevent the incidental take of the federally endangered arroyo toad. DWR worked closely with the U.S. Fish & Wildlife Service (FWS) and the California Department of Fish and Game, among others, to develop a flow regime in Piru Creek that would adequately protect arroyo toad and help with the species' survival and recovery. As such, DWR believes that any modification to the proposed flow regime could harm the arroyo toad and put DWR at risk to unlawfully take the arroyo toad. Thus, DWR believes the Petitioner's request to modify the proposed flow regime in Piru Creek should be denied.

In addition, the Petitioner's request to modify the proposed flow regime could deplete storage in Pyramid Lake and decrease DWR's ability to provide adequate and reliable water supply to its contractors downstream of Pyramid Lake. A combination of winter flows mimicking natural inflows to Pyramid Lake and elevated summer releases from Pyramid Lake, as suggested by the Petitioners, could cause a water shortage at Pyramid Lake. Prior to 2005, the water released in the summer was balanced by withholding in Pyramid Lake water from winter storm events. However, under the Petitioner's proposed flow regime, DWR would be required to both release water in the summer and allow water from winter storm events to pass through to the Piru Creek. DWR probably would not be able to "make up" the water it would be required to release under this proposed regime, especially during dry conditions.

In sum, the Petition asks for modifications to the WQC that have the potential to cause harm to the federally endangered arroyo toad and decrease DWR's ability to maintain

storage in Pyramid Lake and, subsequently, provide an adequate and reliable water supply.

Please feel free to contact me if you or your staff have questions on these comments or would like additional information please contact me at (916) 653-8826 or [esoderlu@water.ca.gov](mailto:esoderlu@water.ca.gov).

A handwritten signature in black ink, appearing to read "Erick Soderlund", with a long horizontal flourish extending to the right.

Erick Soderlund  
Staff Counsel

Attachment – Piru Petition Mailing List

## Piru Petition Mailing List

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