

## **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** 10030      **PERMIT** 5714      **LICENSE** 2840

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 10030 of Tule Basin Farms (Giusti Ranch)** to divert up to 3,520 acre-feet (at a rate of up to 21 cubic feet per second) from its point at North 950 feet and West 275 feet from SE corner of Section 5, T14N, R2E, for transfer between July 1, 2010, to June 30, 2011, 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 our understanding this proposed transfer assumes that the petitioner will substitute groundwater for surface water.

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 protest and comment on Tule Basin Farms (Giusti Ranch)'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 adverse environmental impacts.

- 1) Transfer is not in the public interest: Tule Basin Farms (Giusti Ranch)'s proposed transfer of surface water to eight State Water Project contractors (as cited in the petition dated April 14, 2010) is not in the public interest. Since some groundwater substitution will occur, the transferor, Tule Basin Farms (Giusti Ranch), must demonstrate, not merely assert, that the transfer of surface water from the district will have little to no impact on other parties within or downstream of the District.

Removal of surface water supplies that offset demand for groundwater pumping is not in the public interest since application of the surface water under existing rights (absent the transfer) could instead help raise groundwater elevations under Tule Basin's lands. Other landowners in

this area who may have to cope with lowered groundwater elevations. Their increased costs of pumping could have adverse effects on the local economy that go unexamined by the petitioner.

The petition fails to disclose probable third party impacts in the area of origin (Tule Basin Farms (Giusti Ranch) and its environs) and the area(s) where delivery occurs. Even DWR acknowledges that all transfers have the potential to impact third parties (see 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, to the extent that rice fields or other crops in Tule Basin Farms (Giusti Ranch) lands are flood-irrigated. The District’s petition for temporary transfer provides no accounting of this evaporative loss and how much additional groundwater individual landowners in the vicinity would need to pump to recover it.

2) Transfer is contrary to law.

- a. Water Code Section 1725. Transfers by Tule Basin Farms (Giusti Ranch) with nearly identical terms, timing of release, transfer amounts, additional purposes of use, and proposed new users have occurred serially since 2009, 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
2009	10030	Giusti Ranch (Greg Amaral and Tule Basin Farms)	21	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 domestic, municipal, and industrial uses	Water users within the places of use of the CVP and SWP, facilitated through the Drought Water Bank.	up to 3,765	July 1, 2009 to June 30, 2010	Not to exceed one year
2010	10030	Tule Basin Farms	21	Banks PP and Barker Slough PP	Service area of the State Water Project (Application 5630)	Addition of domestic, municipal, and industrial uses	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 3,520 AF	July 1, 2010 - June 30, 2011	July 1 to September 30, 2010

C-WIN and AquAlliance believe that the proposed 2010 water transfer by Tule Basin Farms (Giusti Ranch) is evidence of a long-term water transfer to the State Water Project that masquerades as a pair of short-term, temporary transfers that are coterminous by the calendar. 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 series of transfers undertaken by Tule Basin Farms (Giusti Ranch) 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 (one that is longer than one year) that should be the subject of a petition under Water Code 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. Petitioners should acknowledge these existing conditions

as context for their proposed transfer. Tule Basin does not acknowledge in its 2010 petition's environmental information that it engaged in a similar transfer in 2009, when it proposed up to 3,765 acre-feet and actually transferred 3,007 acre-feet to the 2009 Drought Water Bank. These one-year transfers, while nominally legal, add to a consistent pattern of nearly identical transfers from the same seller's point of diversion to the same changed points of rediversion (which in both years included State Water Project pumping and conveyance facilities at Banks Pumping Plant and Barker Slough Pumping Plant) to nearly identical customers. The 2010 transfer includes eight state water contractors that in turn include Metropolitan Water District of Southern California, the largest state water contractor participating in the 2009 Drought Water Bank pool of transfer recipients a year ago (our version of this "pool" document was downloaded from the State Water Board's web site in June 2010, whereas Tule Basin Farms' report cites a November 25, 2009 version of the pool to which Tule Basin water was sold). Also part of the 2009 DWB pool was Napa County Flood Control and Water Conservation District, San Bernardino Valley Municipal Water District, and Kern County Water Agency. 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 Tule Basin Farms (Giusti Ranch) is likely to prepare another short-term transfer petition to provide water to this water transfer program next year. We urge the State Water Board to reject this short-term water transfer petition and advise the petitioner to file a long-term transfer petition instead.

- b. The proposed transfer, with nearly identical transfers occurring last year, evidences a long-term transfer subject to review under the California Environmental Quality Act.

Following on the reasoning with respect to the Water Code, C-WIN and AquAlliance allege that the proposed short-term transfer by Tule Basin Farms (Giusti Ranch) to the State Water Project contractors would represent another increment of a "project" that is improperly exempted from CEQA. 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. Tule Basin Farms (Giusti Ranch)'s transfers in 2009 and 2010 constitute a single project put forward by a single independent water 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 similar "up to" amounts to be transferred (between 3,765 and 3,520 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, so serial water transfers are effectively out of compliance with CEQA. 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, when serial, transfers, such as Tule Basin Farms (Giusti Ranch)’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. Tule Basin Farms (Giusti Ranch) is located 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, Tule Basin Farms (Giusti Ranch)) 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 Tule Basin Farms (Giusti Ranch) 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 Sacramento and Feather Rivers continue year-round. Water temperature, flow timing (particularly with respect to attraction flows), and water level issues have been identified and these fishery issues need CEQA review under the aegis of a long-term transfer petition so that cumulative effects on fish and wildlife may be adequately evaluated and mitigated.
  - b. Cumulative effects of lost Delta outflows. Tule Basin Farms (Giusti Ranch) 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 reverse flows in Old and Middle River that in turn contribute to fish entrainment at Banks Pumping Plant, before being exported to water users 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, both intraseasonally and interannually.

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 disclosed and analyzed on individual bases and as part of a programmatic environmental review under the California Environmental Quality Act to ensure all significant environmental effects of cumulating are taken into account.

- 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 Tule Basin Farms (Giusti Ranch), c/o Marc Van Camp, Agent, MBK Engineers 1771 Tribute Road, Suite A, Sacramento, CA 95814

Date 11 JUNE 2010



Protestant(s) or Authorized Representative sign here

Date 11 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 11, 2010, I, Tim Stroshane, have placed in first class mail at Albany, California, a true copy of this comment letter mailed to:**

**Tule Basin Farms (Giusti Ranch)  
c/o Marc Van Camp  
MBK Engineers  
1771 Tribute Road, Suite A  
Sacramento, CA 95814**



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**Tim Stroshane**