

## **STATE WATER RESOURCES CONTROL BOARD**

In the Matter of:

THE PROPOSED REVOCATION OF PERMITS  
16209, 16210, 16211 and 16212  
FOR THE AUBURN DAM PROJECT

### **BRIEF OF FRIENDS OF THE NORTH FORK**

Friends of the North Fork submits this brief in support of the California State Water Resources Control Board Prosecution Team.

#### **DUE DILIGENCE DOES NOT EXIST AND THE PERMITS SHOULD BE REVOKED**

Friends of the North Fork joins with Friends of the River (FOR) and the California Sportfishing Protection Alliance (CSPA) in concluding according to FOR and CSPA's respective arguments, that the permits should be revoked, that the U.S. Department of Interior Bureau of Reclamation (permittee) has not exercised due diligence, and that it would be legal error against the public interest and in violation of the public trust and Article X Section 2 of the California Constitution for the Board to not so determine.

We do so based on factual findings and conclusions of law in the FOR and CSPA briefs and opening statements on the record, and for the following reasons.

#### **PERMITTEE IS NOT ACTING IN GOOD FAITH**

Since issuance of the permit, permittee has sought to take advantage of the actual and potential benefits of the permit without carrying out permit requirements and without fulfilling their responsibilities to the Board and to the people of the State of California.

Permittee action disrupts the state's water rights system. T., page 61. It does not follow Board directives. For example, as directed by the Board, it failed to obtain preliminary approval from the Board for new project design and ot prepare environmental documentation. T, page 110 and 114.

**CONTINUATION OF THE PERMITS CREATES  
UNCERTAINTY, DISLOCATION AND DELAYS  
FOR PROJECT LANDS AND WATERS**

As long as the permits continue to be in effect, the lands and waters of the reservoir area and above and below the dam are mired in uncertainty and confusion.

The most vivid example are the lands and waters of the Auburn State Recreation Area (ASRA).<sup>1</sup> T, page 261-262, public statement page 34. The ASRA encompasses the Auburn Dam take zone.

**IT IS UNCONSCIONABLE FOR PERMITTEE TO CONTROL USES  
IN THE RESERVOIR AREA IN ORDER TO SUPPORT DAM  
CONSTRUCTION WHILE MAKING NO PUBLIC DISCLOSURE  
AND TAKING NO STEPS TOWARDS PROJECT REALIZATION**

Permittee's tight control over land and water management decisions in the canyons while resisting water right permits revocation, not engaging in public disclosure processes and not taking the essential necessary steps to move the project forward, is a failure to carry out the duties of its organic act and is mismanagement of public lands. These controls on actions of other agencies and reservoir-area projects based on decades-old permits may involve ultra vires acts. It also suggests a failure on permittee's part to recognize and to address the moral implications of its daily acts to implement the project on the ground while doing nothing to actually bring the project about.

Permittee has no interest in pursuing the project. T., page 186 and many other citations. Yet it has personnel whose job it is to keep the canyon ready for the dam and reservoir.

The North Fork American River Trail proposed by Placer County, California State CEQA Clearing House Number 2005112042, is subject to this general policy of permittee and its project goal from permittee is to keep new facilities above the reservoir level of Auburn Dam. The reservoir level puts the route on the steepest side slopes with the greatest potential water quality impacts. T, page 262.

**PERMITTEE TAKING NO PROJECT REALIZATION STEPS WHILE  
"WAITING" FOR CONGRESSIONAL ACTION CREATES AN INDEFINITE  
DE FACTO EXEMPTION OF THE PROJECT FROM STATE WATER LAW,  
NEPA, CEQA, THE ENDAGNERED SPECIES ACT AND OTHER LAWS**

Friends of the North Fork is reminded of when Congress exempted of the Alaska Pipeline from NEPA and the unnecessary environmental destruction from construction and oil spills that are a continuing result. By not acting to implement

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<sup>1</sup> ASRA General Plan web page, [http://www.parks.ca.gov/?page\\_id=24325](http://www.parks.ca.gov/?page_id=24325)

the laws that affect the project, could permittee be waiting for an opportunity for Congress to exempt the dam from them? Regardless, permittee's failure to implement its water rights permits and failure to implement NEPA and CEQA are an indefinite evasion of these and other laws.

The Board has an opportunity, and indeed a discretionary and legal responsibility, to act to revoke the permits. This would bring an end to any authority the permittee relies on from the permits for the stranglehold it exercises over the actions of others that it takes in the name of building the Auburn Dam.

**PERMITEE'S DELAY IN DEFINING THE PROJECT AND  
TO ENGAGE IN ENVIRONMENTAL REVIEW  
EFFECT END RUNS AROUND NEPA AND CEQA**

Among the actions permittee does diligently engage in is to keep itself, the public and other decision makers unaware of the project's environmental consequences. It does this by failing to implement NEPA and CEQA. The purpose of these laws is to describe environmental impacts. T., page 207.

The Auburn Dam Council argues that failing to revoke has no cost. T, page 241. Failing to implement NEPA and CEQA prevents documentation of the environmental costs, and prevents knowledge and consideration of the environmental costs, and hides these issues from public and decision maker consideration.

Permittee and project proponents are against doing the necessary environmental studies based on the water rights permits and the Board's authority. This attempt to eviscerate CEQA, NEPA and state water law should not be countenanced by the Board. Further, permittee's policies and actions to control actions in the reservoir area should be subject to NEPA and CEQA litigation. First, however, it is the Board's responsibility to exercise administrative authority to protect the state's environment by revoking the permits. Permittee's failure to define the project and to implement CEQA prevents the Board from carrying out its CEQA lead agency and other CEQA responsibilities.

**KEEPING RESOLUTION OF THE WATER RIGHTS IN LIMBO  
IS THE MAJOR OBSTACLE TO DEVELOPING A VISION FOR  
THE FUTURE OF THE NORTH FORK AMERICAN RIVER CANYON**

Permittee has created a vast natural area that includes near wilderness in the North Fork American River.<sup>2</sup>

Board, ASRA and the public's efforts to create a vision and a future for the North Fork American River, including its water resources, are therefore stymied

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<sup>2</sup> See the Joseph Fisher Smith book, Nature Noir.

## **CONCLUSION**

The Board is respectfully requested to revoke the permits.

This brief has been served today on the parties to this matter.

Dated: September 3, 2008

Respectfully submitted,

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Michael Garabedian, President  
Friends of the North Fork