

EXHIBIT 41

Srh/cym
AD 31491

State of California
State Water Resources Control Board
DIVISION OF WATER RIGHTS
P.O. Box 2000, Sacramento, CA 95812-2000
Info: (916) 341-5300, FAX: (916) 341-5400, Web: http://www.waterrights.ca.gov

NOV 12 PM 2:14

PROTEST - APPLICATION

Based on Environmental Considerations, Public Interest, Public Trust, and Other Issues.
(Protests based on INJURY TO PRIOR RIGHTS should be completed on other side of form)

APPLICATION 31491

1. I, (We) Modesto Irrigation District and Turlock Irrigation District
Name of Protestant(s)
of c/o P.O. Box 4060, Modesto, CA 95352, (209) 526-7388 have read carefully a copy
Mailing address and zip code of protestant(S) Telephone Number
of, or a notice relative to, Application 31491 of G. Scott Fahey
Name of applicant
to appropriate from West Meadows Springs, an unnamed Spring (aka Marco Spring)
and an unnamed Spring (aka Polo Spring), Name of source
at a point at the following points: Within the NW 1/4 of SW 1/4 of Section 11, T2N,
R17E, MDB&M; within the NW 1/4 of NE 1/4 of Section 22, T2N, R17E, MDB&M; and
within the NE 1/4 of NE 1/4 of Section 22, T2N, R17E, MDB&M, respectively.

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, ETC.:
The appropriation will be contrary to law, will require access rights, will not be in the State Water Resources Control Board's jurisdiction, or concerns other issues.

Facts and, if applicable, points of law which support the foregoing allegations are as follows: See attached.

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

4. A true copy of this protest has been served upon the applicant by mail

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

Date: November 9, 2004

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
Scott T. Steffen
Type or print name and title of representative, if applicable
1231 Eleventh Street
Street address
Modesto, CA 95354
City and State
(209) 526-7388
Telephone number

accepted
11/29/04 gsm

Fixed copy
received
9/24 11/10/04

Attachment to Protest
To Application 31491

2. Facts and, if applicable, points of law which support the foregoing allegations are as follows:

The proposed appropriation will not be in the public interest, will have an adverse environmental effect, and/or will adversely affect a public trust use of a navigable waterway.

A. The Tuolumne River is a fully appropriated stream, with the Modesto and Turlock Irrigation Districts holding the earliest pre-1914 Water Rights on the Tuolumne River. Any upstream diversions during drought years will be adverse to the Districts' rights and should not be permitted by the Board.

B. The Application proposed a diversion period of January 1 through December 31, of each year. Certain of these periods (primarily November 1 through May 30) coincide with Chinook Salmon spawning, incubation, rearing and the peak juvenile chinook salmon out-migration seasons.

The National Marine Fisheries Service has also listed *O. mykiss* as threatened in the California Central Valley including tributaries such as the Tuolumne River. The State Board should evaluate the effect of the proposed appropriation on the Tuolumne River salmon fishery, as well as the impact that such appropriation may have on the proposed listing.

C. Modesto and Turlock Irrigation Districts are required to make minimum flow releases for the protection of salmon in the Tuolumne River below La Grange Dam, as prescribed in Article 37 of the Federal Energy Regulatory Commission ("FERC") license for the Don Pedro Project (FERC Project No. 2299). Any reduction in inflow to Don Pedro Reservoir could significantly affect the amount of water available for such required fish releases. The State Board should evaluate the effect of the proposed appropriation on the availability of water for fishery releases made by the Districts.

D. The Districts have also agreed to certain water releases pursuant to the San Joaquin River Agreement and the Vernalis Adaptive Management Plan. Any reduction in inflow to Don Pedro Reservoir could also significantly affect the amount of water available for such additional releases. The State Board should evaluate the effect of the proposed appropriation on the availability of water for such releases.

E. This Application would result in diversion of additional water beyond the amounts previously authorized under Permit 20784. The State Board should evaluate the cumulative impacts of the diversions under this Application in light of the diversions occurring under Permit 20784.

F. The State Board has issued a Notice of Applications 31384 and 31443, dated November 5, 2004. Those Applications would allow the diversion to storage of an additional 51 acre feet per year. The State Board should evaluate the cumulative impacts of the diversions

under this Application in light of the diversions that will occur if this Application and Application 31384 and 31443 are granted.