

STATE OF CALIFORNIA

STATE WATER RESOURCES CONTROL BOARD

In the Matter of Complaint)
Requesting Action to Restore)
Steelhead, Other Fish,)
Wildlife, and Riparian)
Habitat in the Alameda Creek)
Watershed,)
CALIFORNIA SPORTFISHING)
PROTECTION ALLIANCE,)
Complainant.)

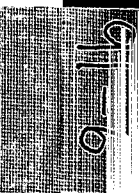
ORDER: WR 91-06
SOURCE: Alameda Creek
Watershed
COUNTY: Alameda and
Santa Clara

ORDER DISMISSING COMPLAINT

BY THE BOARD:

1.0 INTRODUCTION

The California Sportfishing Protection Alliance (CSPA) having submitted a complaint against all water users in the Alameda Creek watershed requesting action to restore certain fish, wildlife, and riparian resources; the State Water Resources Control Board (State Board) staff having investigated the allegations raised by the complaint and having advised CSPA that staff intended to take no further action regarding the complaint; CSPA having requested that the complaint be brought before the State Board; the State Board having duly considered the issues raised by the complaint; the State Board finds as follows:



2.0

BACKGROUND

The California Sportfishing Protection Alliance (CSPA) submitted a complaint in January 1991 to the State Water Resources Control Board (State Board) against seven water agencies and all other water users in the Alameda Creek Watershed in Alameda and Santa Clara Counties. The complaint requests that the State Board take action to restore steelhead, other fish, wildlife, and other riparian habitat throughout the 700-mile Alameda Creek watershed.

Prior to the CSPA complaint, California Trout, Inc. (Cal Trout) submitted a complaint requesting that the City of San Francisco be directed to release additional water from Calaveras Reservoir to restore a trout fishery in a three-mile section of Alameda Creek below the dam. In response to the Cal Trout complaint, staff requested comments and recommendations regarding Alameda Creek from the Department of Fish and Game (DFG). DFG staff responded that they had not done any fishery studies on Alameda Creek and did not know of or plan to conduct any fishery studies on the creek. State Board staff also conducted field investigations of Alameda Creek and met with staff from Cal Trout, DFG, and staff from the San Francisco Water Department, which operates Calaveras Reservoir.

Following State Board staff's review of the CSPA complaint, staff advised CSPA by letter dated February 27, 1991 that the statutory adjudication process would be a more appropriate method to address issues of the broad scope and complexity of the issues raised in the complaint. Staff also advised CSPA that there is a lack of technical data relating to fishery resources on Alameda Creek and that State Board staff planned no further action on the complaint.

By letter dated March 12, 1991, CSPA submitted a report regarding establishment of a steelhead fishery in Alameda Creek and stated that the report provided a sufficient basis for acceptance of their complaint. Although the report lists a number of legal, technical, policy and environmental issues, State Board staff advised CSPA by letter dated April 4, 1991 that the report does not provide sufficient technical information to serve as the basis for setting instream flow requirements for fish protection. CSPA responded that they disagreed with staff's conclusion and requested that the subject be brought before the State Board at a workshop.

3.0

ANALYSIS

Resolution of the issues raised in the CSPA complaint would require a detailed examination of the water

resources and use of water throughout the Alameda Creek watershed, as well as extensive research on complex fishery and environmental resources in the watershed. In addition to determining the flow requirements needed for restoration of steelhead trout, a fishery study would also be required to determine if restoration of steelhead trout would be compatible with the trout stocking which DFG currently does in the lower section of Alameda Creek. The State Board has received no indication from DFG that it regards the restoration of steelhead in Alameda Creek as a high priority.

Many of the other issues which would have to be resolved with respect to restoration of a steelhead run in Alameda Creek are identified in the report submitted by CSPA with a letter dated March 12, 1991. As stated in State Board staff's letter of April 4, 1991, however, that report does not provide sufficient technical information to serve as the basis for setting instream flow requirements for fish protection.

Consequently, a State Board proceeding to address the issues raised in the complaint would require commitment of substantial resources from the engineering, environmental, and legal staffs. Currently, our limited enforcement resources available for fishery and public trust protection are directed primarily to:

(a) watercourses where instream flow requirements

previously have been set; (b) watercourses on which fishery studies have been conducted; or (c) instances involving protection of public trust resources of statewide significance. None of those criteria are met in this instance.

In addition to the necessary technical studies, State Board action to grant the relief requested in the complaint probably would require further documentation and analysis to comply with the California Environmental Quality Act ("CEQA", Public Resources Code Section 21000 et seq.). No source of funding for an environmental impact report or other CEQA documentation has been identified.

Another factor which would compound analysis of public trust protections for Alameda Creek is the fact that the stream is used as part of a ground water recharge/conjunctive use operation in an area which previously experienced a seawater intrusion problem. Thus, any program which would significantly alter the present method of operating the stream may require hydrogeologic studies and hydrology modeling of the various streams, reservoirs, and ground water storage areas in the watershed.

Restoration of steelhead trout in Alameda Creek also would be impeded by several existing physical barriers in the stream including large gravel pits, inflatable flood control dams, and concrete barriers in the stream channel. All of these barriers could serve as obstructions to steelhead migration. To date, no analysis has been done to show the economic feasibility of modifying or removing the physical barriers in the stream channels.

In view of numerous substantial obstacles to measures requested by the complainant, we concur in staff's recommendation that no further State Board resources should be expended in response to the complaint.*

4.0 CONCLUSION

Based on the findings set forth above, the State Board concludes that the CSPA complaint should be dismissed without prejudice to reconsideration of the issues raised in the complaint if significant new information becomes available.

* As indicated in staff's correspondence with CSPA, the statutory adjudication process would provide an alternative procedure for addressing some of the issues raised by the complaint. In particular, a statutory adjudication would provide a means of adjudicating the water rights of all diverters from Alameda Creek and determining their obligations with respect to protection of public trust uses. Before initiating a statutory adjudication, however, the State Board must find that the public interest and necessity would be served by the adjudication. (Water Code Section 2525). Based on the facts discussed above, we believe it is doubtful that the required finding could be made with respect to a petition for a statutory adjudication of Alameda Creek.

ORDER

IT IS HEREBY ORDERED that:

The complaint of the California Sportfishing Protection Alliance against water users on Alameda Creek is dismissed.

CERTIFICATION

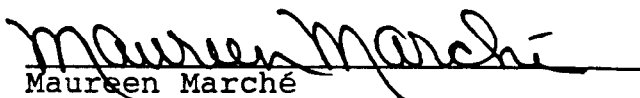
The undersigned, Administrative Assistant to the State Board, does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on August 22, 1991.

AYE: W. Don Maughan
 Edwin H. Finster
 Eliseo M. Samaniego
 John Caffrey

NO: None

ABSENT: None

ABSTAIN: None


Maureen Marché
Administrative Assistant
to the Board

