

Jennifer L. Harder  
jharder@downeybrand.com

June 4, 2008

**VIA HAND-DELIVERY (RECIPIENT) & U.S. MAIL (SERVICE LIST)**

Francis Spivy-Weber, Hearing Officer  
State Water Resources Control Board  
1001 I Street  
Sacramento, CA 95814

Re: Lake Alpine Water Company and County of Alpine's Petition for Partial Assignment of State Filed Application 5648 and Accompanying Application 5648X07, Petition for Changes to SFA 5648, and Application 31523

Dear Hearing Officer Spivy-Weber:

This letter is written on behalf of the Calaveras County Water District ("CCWD") and the Northern California Power Agency ("NCPA") concerning the Notice of Public Hearing issued May 22, 2008 ("Notice") for the above-referenced petitions and applications ("Petitions").

The Petitions seek up to 395 acre-feet annually ("AFA") from the Stanislaus River system. As the Notice indicates, most of the major water users on the Stanislaus system<sup>1</sup> including CCWD and NCPA protested the Petitions; all protests have been settled/withdrawn in light of the small quantity of water involved. However, despite dismissal of all protests, the Notice identifies an extensive list of "Key Issues" that creates substantial concern regarding the potential scope of the hearing on the Petitions ("Hearing"). For example, the Notice inquires:

1(b) Does . . . any county covered under SFA 5648 have a general and coordinated plan for the development of water that would use SFA 5648;

1(d) To what extent, if any, should the pre-1914 rights adjudicated under the 1929 Stanislaus River Decree be considered in the determination of water availability; and

<sup>1</sup> Most water rights on the Stanislaus River system are beneficially used in large storage and diversion projects operated by the Bureau of Reclamation, NCPA/CCWD, and South San Joaquin Irrigation District/Oakdale Irrigation District. Among the major facilities on the River, New Spicer Reservoir has a capacity of 189,000 AF and New Melones Reservoir has a capacity of 2.4 million AF at gross pool. The small diversion requested by the Petitions would be almost undetectable in a watershed that generates an average 717,900 AFA. Cal. Water Data for Stanislaus River at Ripon, gaging station 11303000, <<http://ca.water.usgs.gov/archive/waterdata/2001/11303000.html>> (visited May 27, 2008).

OFFICE OF WATER RIGHTS  
SACRAMENTO  
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STATE WATER RESOURCES CONTROL BOARD

1(e) Will the assignment or release of priority of SFA 5648 adversely affect any holders of post-1914 appropriative water rights in the counties of origin whose rights are junior to SFA 5648 but senior to Application 31523? If yes, how will those rights be adversely affected? What are those rights?

With respect to Key Issue 1(b), Water Code §§ 10500 and 10504 provide that the State Water Board may release from priority or assign any portion of SFA 5648 "when the release or assignment is for the purpose of development not in conflict with [a] . . . general or coordinated plan . . . looking toward the development, utilization, or conservation of the water resources of the state." Calaveras County is identified as a county of origin entitled to acquire water under SFA 5648, and CCWD is the primary water purveyor in Calaveras County. In part in its capacity as a county-of-origin purveyor, CCWD protested the Petitions, and then settled and dismissed its protest. By virtue of settling/dismissing its protest, CCWD agreed that the 395 AFA requested by the Petitions is "not in conflict with" CCWD's plans for use of SFA 5648 for the benefit of Calaveras County. This protest dismissal should preclude the need for CCWD to appear at the Hearing to present testimony on the details of its plans.

We are concerned, however, that Key Issue 1(b) is worded broadly enough that CCWD risks discussion/determinations in our absence regarding CCWD's plans (or, more precisely, due to our absence, an incorrectly perceived lack of plans) that involve SFA 5648. We are equally concerned that the time, funding and staff resources required to prepare for and participate in the Hearing to present such plans would be substantial, and are unnecessary in light of the small quantity of water requested by the Petitions, the "not in conflict" standard, and our protest settlement/dismissal.

Likewise, we are concerned that Key Issues 1(d) and 1(e) create the potential for discussions/determinations regarding CCWD's and NCPA's pre-1914 and post-1914 water rights despite the fact that both entities (and all protestants) have resolved their water right concerns through settlement/protest dismissal. In light of the small quantity requested by the Petitions, the relative seniority of SFA 5648, and the fact that there are no pending protests to the Petitions, we respectfully submit that the detailed inquiries proposed by Key Issues 1(d) and 1(e) are not necessary in order for Petitioners to demonstrate water availability, or for the State Water Board to issue findings regarding water availability. Moreover, any issues related to injury to existing water rights have already been resolved through the protest process, and with imposition of a standard general permit term that protects senior water rights.

The State Water Board has previously noted that hearings on unprotested assignment applications can be "extremely brief." (State Water Resources Control Board, Order WR No. 97-06 (Sept. 18, 1997).) Petitioners request changes to SFA 5648 that may warrant additional inquiry; at the same time, it is our hope and request that in the interest of efficiency and protection of scarce public funds, such inquiry will not extend to issues that would require participation by entities that have resolved their protests. It may be that the Notice was not intended to be so broad as to require such participation, however, given the substantial CCWD

and NCPA interests implicated by the Key Issues as currently written, we are writing to request formal clarification.

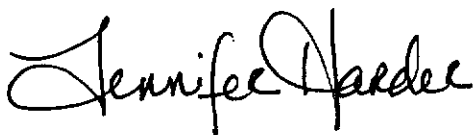
Specifically, to avoid further investment of CCWD and NCPA's limited public resources in the assessment of the relatively small and unprotested Petitions, we respectfully request revision/clarification of the Key Issues through issuance of a revised Notice. A revised draft of the Key Issues (in track changes and clean form) is attached for your consideration. These revisions would allow the State Water Board to make required findings, and at the same time provide assurances to CCWD and NCPA that they need not participate in the Hearing.

A revised Hearing Notice would also provide an opportunity to correct certain inaccuracies/typographical errors in the Notice. For example, The Table Summarizing Development – SFA 5648 lists CCWD Permit 15013 (Application 11792B) under the heading Calaveras River, though the sources of water for that permit are Highland Creek and the North Fork Stanislaus River.

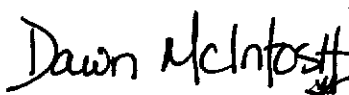
Alternatively, we request that a pre-hearing conference be scheduled to allow the Hearing Officer and parties to narrow the scope of the Hearing, perhaps by way of stipulation. In that regard, we prefer a revised Notice, as we have already invested substantial resources in resolving our protest to the Petitions and are seeking to avoid expenditure of additional public funds in formal appearances related to this matter.

If the State Water Board declines to clarify the scope of the Hearing through a revised Notice (*i.e.*, by choosing to hold a pre-hearing conference in lieu of a revised Notice, or by choosing to take no action) we respectfully request at least a 60-day extension of the July 1 deadline for submission of testimony, and the July 14 Hearing date, to provide CCWD and NCPA the opportunity to calendar this matter for appearances by our public agency staff and experts who, in light of our protest dismissals, had not anticipated participating in the Hearing and thus have made other commitments through the middle to end of August. The timing of the Notice provided only eight business days to identify witnesses and ensure that they are available to appear on July 14. In the event that our participation in the Hearing remains necessary, moving the testimony and Hearing dates would allow us to calendar and prepare for the Hearing as appropriate.

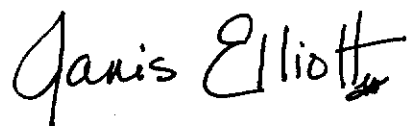
Respectfully submitted,



DOWNEY BRAND LLP  
Jennifer L. Harder (CCWD)



MEYERS NAVE  
Dawn McIntosh (NCPA)



COUNTY OF CALAVERAS  
Janis Elliott, Asst. County Counsel

**Attachments**

cc: Service List

David Andres, General Manager, Calaveras County Water District  
Ed Pattison, Water Resources Manager, Calaveras County Water District

Ken Speer, Northern California Power Agency  
Michael Dean, Meyers Nave

Matt Bullock, SWRCB counsel  
Jane Farwell, Division of Water Rights  
Ernest Mona, Division of Water Rights

David Aladjem (firm)  
Kevin O'Brien (firm)

**MAILING LIST**

**SFA 5648X07**

**LAWC/County of Alpine  
(updated 04/30/2008)**

**Avery 5360**

Lake Alpine Water Company  
and County of Alpine  
c/o Jesse W. Barton  
Gallery & Barton  
1112 I Street, Suite 240  
Sacramento, CA 95814-2865

Lake Alpine Water Company  
and County of Alpine  
c/o Robert W. Wagner  
Wagner & Bonsignore  
444 North Third Street, Suite 325  
Sacramento, CA 95814-0228

United States Bureau of Reclamation  
Mid-Pacific Regional Office  
c/o Ray Sahlberg and Bob Colella  
2800 Cottage Way  
Sacramento, CA 95825

California Department of Fish and Game  
c/o Sandra Morey, Regional Manager  
Sacramento Valley Central Sierra Region  
1701 Nimbus Road, Suite A  
Rancho Cordova, CA 95670

California Department of Water  
Resources  
State Water Project Analysis Office  
c/o Robert Cooke, Acting Chief  
1416 Ninth Street  
P.O. Box 942836  
Sacramento, CA 94236-0001

Stockton East Water District  
c/o Jeanne M. Zolezzi  
Herum Crabtree Brown  
2291 West March Lane, Suite B100  
Stockton, CA 95207

Oakdale Irrigation District and  
South San Joaquin Irrigation District  
c/o Tim O'Laughlin  
O'Laughlin & Paris LLC  
2571 California Park Drive, Suite 210  
Chico, CA 95929

Calaveras County Water District  
c/o Jennifer L. Harder  
Downey Brand LLP  
555 Capitol Mall, 10<sup>th</sup> Floor  
Sacramento, CA 95814

Northern California Power Agency  
c/o Michael F. Dean, General Counsel  
Meyers, Nave, Riback, Silver & Wilson  
555 Capitol Mall, Suite 1200  
Sacramento, CA 95814

Northern California Power Agency  
c/o Dawn A. McIntosh, Esq  
Meyers, Nave, Riback, Silver & Wilson  
333 South Grand Blvd, Suite 1670  
Los Angeles, CA 90071

South San Joaquin Irrigation  
District  
c/o Steven P. Emrick, General  
Counsel  
P.O. Box 747  
Ripon, CA 95366-0747

Oakdale Irrigation District  
c/o Steve Knell, GM  
1205 East F Street  
Oakdale, CA 95361

The Board of Supervisors  
Stanislaus County  
Board Chairperson  
1010 Tenth Street, Suite 6500  
Modesto, CA. 95354

The Board of Supervisors  
Alpine County  
Board Chairperson  
P.O. Box 158  
Markleeville, CA 96120

The Board of Supervisors  
Calaveras County  
Board Chairperson  
891 Mountain Ranch Road  
San Andreas, CA 95249-9709

The Board of Supervisors  
Amador County  
Board Chairperson  
810 Court Street  
Jackson, CA 95642

The Board of Supervisors  
San Joaquin County  
Board Chairperson  
Courthouse, Room 701  
222 East Weber Avenue  
Stockton, CA 95202

United States Forest Service  
Stanislaus National Forest  
P.O. Box 500  
5519 Highway 4  
Hathaway Pines, CA 95233

Kronick, Moskovitz, Tiedemann &  
Girard  
c/o Janet K. Goldsmith  
Attorney At Law  
400 Capitol Mall, 27<sup>th</sup> Floor  
Sacramento, CA 95814-4417

State Water Contractors  
c/o General Manager  
1121 L Street, Suite 1050  
Sacramento, CA 95814

Bradley J. Herrema  
Attorney At Law  
Hatch & Parent, A Law Corporation  
21 East Carrillo Street  
Santa Barbara, CA 93101

Avery 5360

Public Resources  
Division  
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Public Rights  
Sacramento

**KEY ISSUES**

1. Petition for Partial Assignment of SFA 5648

a. Does the State of California have applicant's proposed development conflict with a general and/or coordinated plan for the development of water that would use SFA 5648? OK

b. Does Alpine County or any other county covered under SFA 5648 have a general and coordinated plan for Does the applicant's proposed development of water that would use SFA 5648? e. Will the State Water Board's partial assignment of SFA 5648 to the Applicants be for purposes of development that are not in conflict with a general and coordinated plan or conflict with water quality objectives established pursuant to law? OK

d. Is unappropriated water available for appropriation? To what extent, if any, should the pre 1914 rights adjudicated under the 1929 Stanislaus River Decree be considered in the determination of water availability? e. Will the assignment or release of priority of SFA 5648 adversely affect any holders of post 1914 appropriative water rights in the counties of origin whose rights are junior to SFA 5648 but senior to Application 31523? If yes, how will those rights be adversely affected? What are those rights? water physically available at the applicants' proposed point(s) of diversion? During the months covered by Order 98-08, is water in excess of 395 AFA available for diversion under water right permits and/or licenses that are junior to SFA 5648? OK

f. Should the State Water Board approve the petition for partial assignment of SFA 5648? If so, what conditions, if any, should be included in the approval to ensure that the diversion is in accordance with applicable law and in the public interest?

g. Should the State Water Board release the priority of SFA 5648 in favor of Application 31523? If so, what conditions, if any, should be included in the approval to ensure that the diversion is in accordance with applicable law and in the public interest?

h. In which county or counties does the water covered by SFA 5648 originate? Will the State Water Board's partial assignment deprive the county or counties in which the water covered by the application originates of any such water necessary for the development of the county or counties?

i. What terms and conditions, if any, should be included in any permit issued by the State Water Board? Will approval of the application result in adverse environmental impacts, including water quality impacts, or harm to public trust resources? What conditions, if any, should the State Water Board adopt to avoid or mitigate any adverse impacts on fish, wildlife, or other public trust resources that may occur as a result of approval of the petition?

## 2. Petition to Change SFA 5648

- a. Do the Applicants' petition and application for partial assignment of SFA 5648 propose the development of water within the place of use designated by SFA 5648, particularly insofar as it pertains to the Stanislaus River watershed?
- b. Would approval of the Applicants' petition to change the point of diversion, place of use, and purposes of use for SFA 5648 result in injury to any legal user of water, unreasonably affect fish, wildlife, or instream beneficial uses, and serve the public interest?
- c. Should the State Water Board approve the Applicants' change petition for SFA 5648? If so, what conditions, if any, should be included in the State Water Board order approving the change petition?

## 3. Application 31523 – Area of Origin Claim

- a. Are the Applicants entitled to priority for any of the following reasons: 1) under the watershed protection statutes (Wat. Code, §§ 11128, 11460 et seq.), 2) under the county of origin statutes (Wat. Code, § 10500 et seq.), or 3) over holders of post-1914 appropriative water rights in the counties of origin whose rights are junior to SFA to 5648 but senior to Application 31523?
- b. Is water available for appropriation? If so, when and under what circumstances is water available?
- c. Is the proposed appropriation for a beneficial use and in the public interest? If the State Water Board approves the application, what conditions, if any, should be included in the permit to ensure that the diversion is in accordance with applicable law and in the public interest?
- d. Will the proposed appropriation cause injury to the prior rights of other legal users of the water, cause environmental impacts or harm to public trust resources, or cause degradation of water quality on a project-specific or cumulative basis?
- e. If issues 3a – 3d are answered affirmatively, what terms or conditions should be included in the approval to mitigate for such impacts or harm that may occur as a result of approval of the application?



## **KEY ISSUES**

### **1. Petition for Partial Assignment of SFA 5648**

- a. Does the applicant's proposed development conflict with a general or coordinated plan for the development of water that would use SFA 5648?
- b. Does the applicant's proposed development conflict with water quality objectives established pursuant to law?
- c. Is water physically available at the applicants' proposed point(s) of diversion? During the months covered by Order 98-08, is water in excess of 395 AFA available for diversion under water right permits and/or licenses that are junior to SFA 5648?
- d. Should the State Water Board approve the petition for partial assignment of SFA 5648? If so, what conditions, if any, should be included in the approval to ensure that the diversion is in accordance with applicable law and in the public interest?
- e. Should the State Water Board release the priority of SFA 5648 in favor of Application 31523? If so, what conditions, if any, should be included in the approval to ensure that the diversion is in accordance with applicable law and in the public interest?
- f. In which county or counties does the water covered by SFA 5648 originate? Will the State Water Board's partial assignment deprive the county or counties in which the water covered by the application originates of any such water necessary for the development of the county or counties?
- g. What terms and conditions, if any, should be included in any permit issued by the State Water Board? Will approval of the application result in adverse environmental impacts, including water quality impacts, or harm to public trust resources? What conditions, if any, should the State Water Board adopt to avoid or mitigate any adverse impacts on fish, wildlife, or other public trust resources that may occur as a result of approval of the petition?

### **2. Petition to Change SFA 5648**

- a. Do the Applicants' petition and application for partial assignment of SFA 5648 propose the development of water within the place of use designated by SFA 5648, particularly insofar as it pertains to the Stanislaus River watershed?
- b. Would approval of the Applicants' petition to change the point of diversion, place of use, and purposes of use for SFA 5648 result in injury to any legal user of water, unreasonably affect fish, wildlife, or instream beneficial uses, and serve the public interest?

c. Should the State Water Board approve the Applicants' change petition for SFA 5648? If so, what conditions, if any, should be included in the State Water Board order approving the change petition?

3. Application 31523 – Area of Origin Claim

a. Are the Applicants entitled to priority for any of the following reasons: 1) under the watershed protection statutes (Wat. Code, §§ 11128, 11460 et seq.), 2) under the county of origin statutes (Wat. Code, § 10500 et seq.), or 3) over holders of post-1914 appropriative water rights in the counties of origin whose rights are junior to SFA to 5648 but senior to Application 31523?

b. Is water available for appropriation? If so, when and under what circumstances is water available?

c. Is the proposed appropriation for a beneficial use and in the public interest? If the State Water Board approves the application, what conditions, if any, should be included in the permit to ensure that the diversion is in accordance with applicable law and in the public interest?

d. Will the proposed appropriation cause injury to the prior rights of other legal users of the water, cause environmental impacts or harm to public trust resources, or cause degradation of water quality on a project-specific or cumulative basis?

e. If issues 3a – 3d are answered affirmatively, what terms or conditions should be included in the approval to mitigate for such impacts or harm that may occur as a result of approval of the application?