

**PROTEST of Camp Lotus, Friends of the River, All-Outdoors California Whitewater Rafting, American Whitewater, California Canoe and Kayak, California Outdoors, Foothill Conservancy, Mother Lode River Center, OARS California Rafting, Restoring the Stanislaus River, Sierra Mac River Trips, South Yuba River Citizens League, and Tuolumne River Trust**

**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.waterboards.ca.gov/waterrights>  
[DCP-WR-Petition@waterboards.ca.gov](mailto:DCP-WR-Petition@waterboards.ca.gov)**

**PROTEST – (Applications & Petitions)**

**BASED ON ENVIRONMENTAL AND PUBLIC INTEREST CONSIDERATIONS**

**APPLICATIONS: 5630, 14443, 14445A, & 17512**

**PETITIONS seeking changes of Water Right Permits 16478, 16479, 16481, and 16482 OF California Department of Water Resources (DWR) (Petition received by SWRCB on February 22, 2024)**

We, **Charles Center, Owner, Camp Lotus**, 5461 Bassi Rd., Lotus, CA, 95651, [charlesmcenter@gmail.com](mailto:charlesmcenter@gmail.com), (530) 622-8672;

**Jann Dorman, Executive Director, Friends of the River**, 3336 Bradshaw Rd., Ste. 335, Sacramento, CA 95827, [janndorman@friendsoftheriver.org](mailto:janndorman@friendsoftheriver.org), (916) 442-3155 ext. 200, and **Keiko Mertz, Policy Director, Friends of the River**, 3336 Bradshaw Rd., Ste. 335, Sacramento, CA 95827, [keiko@friendsoftheriver.org](mailto:keiko@friendsoftheriver.org), (916) 442-3155 ext. 201;

**Scott Armstrong, Owner, All-Outdoors California Whitewater Rafting**, 1026 Lotus Rd., Lotus, CA 95651, [scott@aorafting.com](mailto:scott@aorafting.com), (800) 247-2387;

**Isaac Ingram, General Manager, American River Touring Association (ARTA)**, 6 S Washington St # 16, Sonora, CA 95370, [isaac@arta.org](mailto:isaac@arta.org), (209) 962-7873

**Theresa Lorejo-Simsiman, California Stewardship Director, American Whitewater**, 12155 Tributary Point Dr., # 46, Gold River, CA 95670, [theresa@americanwhitewater.org](mailto:theresa@americanwhitewater.org), (916) 835-1460;

**Keith Miller, Owner, California Canoe and Kayak**, 288 9<sup>th</sup> Ave., Ste. C, Oakland, CA 94606, [cckjefe@gmail.com](mailto:cckjefe@gmail.com), (510) 893-7833;

**Nathan Rangel, Executive Director, California Outdoors**, P.O. Box 40, 1 Coloma, CA 95613, [nathanjrangel@gmail.com](mailto:nathanjrangel@gmail.com), (530) 320-7384;

**Brian Jobson, President, Board of Directors, Foothill Conservancy**, 35 Court St., Ste. 1, Jackson, CA 95642, [jobsonbrian@hotmail.com](mailto:jobsonbrian@hotmail.com), (203) 273-9542;

**Scott Underwood, Owner, Mother Lode River Center**, 6280 CA-49, Lotus, CA 95651, [scott@malode.com](mailto:scott@malode.com), (530) 626-4187;

**Clavey Wendt, Co-Owner, OARS California Rafting (OARS)**, 2863 CA-49, Angels Camp, CA 95222, [claveywendt@gmail.com](mailto:claveywendt@gmail.com), (209) 736-2597;

**Kevin Wolf, President, Restoring the Stanislaus River**, P.O. Box 1513, Sonoma, CA 95416, [kevinjwolf@gmail.com](mailto:kevinjwolf@gmail.com), (530) 75-4211;

**Marty McDonnell, Owner, Sierra Mac River Trips**, 27890 CA-120, Groveland, CA 95321, [marty@sierramac.com](mailto:marty@sierramac.com), (970) 218-0625;

**Aaron Zettler-Mann, Executive Director, South Yuba River Citizens League (SYRCL)**, 313 Railroad Ave., Ste. 101, Nevada City, CA 95959, [aaron@yubariver.org](mailto:aaron@yubariver.org), (530) 265-5961;

**Patrick Koepele, Executive Director, Tuolumne River Trust**, 251 W. Jackson St., Sonora, CA 95370, [patrick@tuolumne.org](mailto:patrick@tuolumne.org), (208) 588-8636; and

**Stephen Smallcombe, Board Chair, Upper Merced River Watershed Council**, P.O. Box 5008-201, Mariposa, CA 95338, [kristinarylands@gmail.com](mailto:kristinarylands@gmail.com), (209) 379-5075

(Protestants)

have read carefully the State Water Resources Control Board's (State Water Board) notice of Petition Requesting Changes in Water Rights of the Department of Water Resources for the Delta Conveyance Project.

We protest this application and these petitions because:

- 1) They would have adverse environmental impacts.
- 2) They would not best conserve the public trust.
- 3) They would not best conserve the public interest.
- 4) They are contrary to law.

**We state the facts that support our allegations, our reasons for the protest, and our terms for withdrawing the protest, in the attached document entitled "Protest of Camp Lotus, Friends of the River, et al. of the Application and Petitions of the California Department of Water Resources Relative to the Delta Conveyance Project" (page 6 below).**

A true copy of this protest has been served upon the applicant and petitioner by e-mail at [David.Steffenson@water.ca.gov](mailto:David.Steffenson@water.ca.gov) on May 13, 2024.

Signed May 13, 2024:

Charles Center, Owner  
Camp Lotus



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Jann Dorman, Executive Director  
Friends of the River



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Keiko Mertz, Policy Director  
Friends of the River



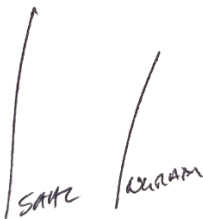
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Scott Armstrong, Owner  
All-Outdoors California Whitewater Rafting



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Isaac Ingram, General Manager  
American River Touring Association



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Theresa Lorejo-Simsiman, California Stewardship Director  
American Whitewater

*Theresa Lorejo-Simsiman*

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Keith Miller, Owner  
California Canoe and Kayak

*Keith Miller*

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Nathan Rangel, Executive Director  
California Outdoors

*Nathan Rangel*

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Brian Jobson, President  
Foothill Conservancy

*Brian Jobson*

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Scott Underwood, Owner  
Mother Lode River Center

*Scott Underwood*

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Clavey Wendt, Owner  
OARS California Rafting

*Clavey Wendt*

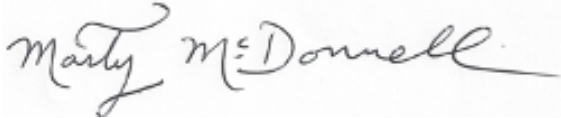
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Aaron Zettler-Mann, Executive Director  
South Yuba River Citizens League



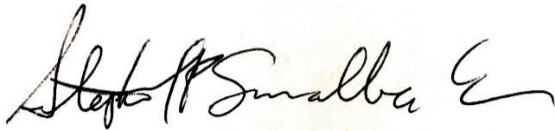
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Patrick Koepele, Executive Director  
Tuolumne River Trust



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Stephen Smallcombe, Board Chair  
Upper Merced River Watershed Council



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## ATTACHMENT

### Protest of Camp Lotus, Friends of the River, et al. of the Application and Petitions of the California Department of Water Resources Relative to the Delta Conveyance Project

#### FACTS SUPPORTING ALLEGATIONS

##### **I. The Proposed Project Would not Best Serve the Public Interest or Public Trust**

The Petition will not serve the Public Interest and violates the Public Trust due to the severe negative impacts the Delta Conveyance Project (hereafter, “The Project”) will have on the watersheds, rivers, and communities that are part of the upper Delta watershed system.

The Project will have extensive negative ecological impacts on the upper Delta river watershed systems due to the substantial and unique Public Interest of each river that is part of the Delta watershed. Each river tributary to the Delta estuary system has world-renowned environmental significance, contributes to thriving communities, drives local economies, and provides recreational opportunities for millions of individuals each year. Clearly, changes in water flow and temperatures, and the likely construction of additional export projects built along these river systems due to The Project would both directly and significantly impact the ecosystems, communities, economies, and recreation of each river and watershed. These direct impacts are contrary to Public Interest and violate the Public Trust.

It is difficult to overstate the Public Interest in the upper reaches of the rivers that feed the Delta estuary watershed. For example, it is widely acknowledged that the South Fork American River is one of the “finest recreational resources in California.”<sup>1</sup> The

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<sup>1</sup> *South Fork American River*, Bureau of Land Management, <https://www.blm.gov/visit/south-fork-american-river>

Upper American River Watershed provides 14.9 billion dollars per year in goods and services delivered to people globally.<sup>2</sup> The Tuolumne River is known for both the river's unparalleled beauty as well as world-renowned recreation and fishery resources. Each year, thousands of visitors float the Tuolumne River spending millions of dollars at local businesses.<sup>3</sup> On the upper Sacramento River, recreation and tourism have become two of the primary drivers for those local economies.<sup>4</sup> The upper Merced River is not only home to one of the few remaining pristine Sierra Nevada fisheries, but it also has some of the most outstanding whitewater rafting, camping, and hiking opportunities in the world.<sup>5</sup> The rapid growth of Calaveras County's tourism economy is due largely to the upper Mokelumne River. A decade-old study found that river visitors spent an average of \$40-\$60 per person on local businesses, becoming a major economic driver for local communities located along the Mokelumne River watershed.<sup>6</sup>

The unequivocal consensus from vast amounts of data, surveys, and publications on the economic value of healthy river systems including, but not limited to, protecting the navigability on the upper reaches of the Delta system, is that local communities are thriving because healthy river systems generate tourism, recreation, and a sense of community and culture. Further, the value the rivers and watersheds provide to local communities is increasing, as interest in recreation and tourism continues to grow exponentially. Given the enormous Public Interest in support of protecting recreation,

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<sup>2</sup> *An Incentive to Invest: Understanding the Economic Value of the Upper American River Watershed*, El Dorado Water Agency (March, 2024)

<sup>3</sup> *Mother Lode Congressman hears about Tuolumne River Access issues in Groveland*, Guy McCarthy, The Union Democrat (August 14, 2023)

<sup>4</sup> *Upper Sacramento River Watershed*, Sacramento River Watershed Program, <https://sacriver.org/explore-watersheds/northeast-subregion/upper-sacramento-river-watershed/>

<sup>5</sup> *Merced River*, National Wild and Scenic Rivers System, <https://www.rivers.gov/rivers/river/merced>

<sup>6</sup> *Protecting the Mokelumne River is good for the economy*, George Wendt, <https://calaverascap.com/protecting-the-mokelumne-river-is-good-for-the-economy/> (February 21, 2014)

navigability, environmental health, and economic drivers that these tributary rivers provide, a thorough and complete understanding of the impact The Project will have on the upper reaches of the Delta river system is fundamental to assessing necessary mitigation and export limits. Such information is necessary to determine if The Project, on balance, is actually in the Public Interest and protects Public Trust beneficial uses.

To meaningfully understand and quantify impacts of The Project on tributary (upstream) communities and watersheds, a full analysis of the The Project's impacts on each river system and watershed must be conducted, disclosed, and reviewed. Without a complete analysis and disclosure, decision makers and the public are left in the dark as to the full extent of project impacts. In addition, it is imperative that all rivers and watersheds in the upper Delta be individually analyzed for the cumulative and indirect impacts. CEQA requires that an agency must use standards of practicality and reasonableness as well as its best efforts to *fully disclose* cumulative impacts of a project. (Guidelines, §§ 15130(b), 15144, 15151.) The analyses of cumulative impacts resulting from The Project is necessary to avoid a piece-meal approach that would result in the failure to adequately identify and address the negative impacts of the project. Further, the timing amounts, temperature, and resulting water quality from water exports via The Project must be disclosed and fully analyzed.<sup>7</sup>

The Project will likely increase the availability, frequency, and capacity for water exports. It will remove physical constraints that currently prevent water from being diverted from the Delta and water flows that currently feed the Bay-Delta estuary. By

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<sup>7</sup> The Project Applications and Petitions refer to the Delta Conveyance Project EIR for all of its information furnished by the Petition, including environmental and economic impact analysis (Petition, Supplemental Information for Petition for Change in Point of Diversion pp. 8-14). Because this information is contained in The Project EIR, this Protest necessarily references the EIR and its deficiencies.



removing the structural constraints, additional diversions, dams, and water infrastructure projects will become feasible; historically, such infrastructure projects skew the transfer of wealth from these watersheds to other geographical areas. Removing the structural constraints creates a false economic viability and inequitable outcomes. It will disadvantage and damage rural local economies by transferring wealth from these resource-rich regions to urban areas, and to corporate agribusiness.. The rural communities and Public Trust beneficial uses will suffer.

In analyzing potential impacts, an agency must consider reasonably foreseeable, indirect physical changes to the environment resulting from the proposed action. (CEQA Guidelines §15064(d)(1),(2)). It is reasonably foreseeable that The Project will make feasible, incentivize, and/or drive additional dams, diversions, and infrastructure projects. For example, the Alder Creek project is a proposed 175,00 acre-feet water storage project located in the upper American River watershed. Its branding goal is to enhance Central Valley Project/State Water Project (CVP/SWP) adaptive operations, but yet the full impact to downstream beneficial uses including existing project uses have not been disclosed.<sup>8</sup> The proposed Centennial Dam project would be built between two existing reservoirs on the Bear River and has a water storage capacity of 110,000 acre-feet. It would flood of Indigenous cultural sites, hundreds of homes, and bury miles of river canyon under reservoir water.<sup>9</sup> The Project will enable these and other new water infrastructure projects in upper watersheds of the Delta by by destroying the current natural limits that constrain the physical amount of water that can be exported from the

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<sup>8</sup> Alder Creek Water Storage and Conservation Project, El Dorado Water Agency, [https://www.edwateragency.org/Shared%20Documents/EDWA\\_Alder\\_Factsheet\\_rebrand\\_10-20.pdf](https://www.edwateragency.org/Shared%20Documents/EDWA_Alder_Factsheet_rebrand_10-20.pdf)

<sup>9</sup> NID says climate change is reason for new dam on the Bear River, Matt Weiser, Water Deeply (January 9, 2017)

Delta. Increasing capacity for water transfers incentivizes projects such as Centennial Dam and Alder Creek.

The incentives are further increased for large storage projects, as previous curtailment orders issued in California have *not* applied to water previously stored in reservoirs.<sup>10</sup> This has led to temperatures lethal to endangered species, and numerous negative impacts on fish, and wildlife. The Project along with past curtailment orders failed to analyze these impacts. The Project relying on this curtailment order quirk will only further incentivize the building of more and greater export or diversion projects to circumvent future curtailment orders as the climate changes. These climate changes that the project failed to analyze will likely increase need for curtailments. Thus, The Project's increasing export capacity allows stored water to then be diverted in greater amounts during dry/critically dry years, further dewatering the Delta and its watershed.

In addition to negative impacts The Project creates by incentivizing new large dam projects, The Project also creates and exacerbates severe negative impacts through the increased diversion capacity from the Delta by existing infrastructure. DWR's request to increase the change in point of diversion petitions can be co-opted by up-stream appropriators to maximize their ability to sell water because of the increased capacity of water transfers created by The Project. One such example of this would be El Dorado Irrigation Districts Water Right Permit 21112.<sup>11</sup> Another example is the drying of the Merced River in 2022. A review of flow gage information on the Merced River in 2022 shows non-curtailed water right holders diverted over 100 percent of natural flow from

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<sup>10</sup> *No Water Rights in CA are Above the Law, Despite SF's Claims*, Doug Obegi, NRDC (September 8, 2021) <https://www.nrdc.org/bio/doug-obegi/no-water-rights-ca-are-above-law-despite-sfs-claims>

<sup>11</sup> *Water Right Permit 2112 Change in Point of Diversion Notice of Preparation*, El Dorado Irrigation District, <https://www.eid.org/Home/Components/RFP/RFP/2052/138>

the lower Merced River during the summer months.<sup>12</sup> A dry riverbed on the Merced happened in four of the last ten years.<sup>13</sup> Here, The Project's tendency to increase capacity of water diversions from The Delta will increase the negative impacts of an already-taxed upper Delta river system.

In sum, the upper reaches of the Delta tributary rivers and watersheds are highly valuable, with longstanding national recognition as unique Public Trust, environmental, recreational, and navigable beneficial uses, as well as important economic resources. The Project would lead to reasonably foreseeable indirect, cumulative, and physical impacts to these valuable resources by changing flow patterns, temperatures, diversions, dams, and infrastructure projects. If The Project opens the door to increase water exports from the Delta estuary and watersheds, numerous unbuilt projects currently in line (but not feasible under the current export limitations) can move forward.

The recreation, economies, and communities that rely on the upper reaches of the Delta river watershed system will be severely impacted by The Project because any water flow decrease, on-river storage, change to physical environment, and/or change to timing of river flow, along with associated changes in temperature, ecological conditions, or dewatering will significantly diminish the recreational, navigability, and Public Trust opportunities on these invaluable river systems. Diminishing these beneficial uses and recreational opportunities will in turn have devastating impacts on the economies, local

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<sup>12</sup> *Dry Conditions on the Merced River in 2022*, Eric Oppenheimer, State Water Resources Control Board (January 16, 2024) [https://www.waterboards.ca.gov/waterrights/water\\_issues/programs/bay\\_delta/docs/2024/2024-01-16-swb-ltr-response-to-nmfs.pdf](https://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/docs/2024/2024-01-16-swb-ltr-response-to-nmfs.pdf)

<sup>13</sup> *2022 Merced River Dewatering and Protective Year-Round Regulations*, Letter from Friends of the River and California Sportfishing Protection Alliance to Eric Oppenheimer, Executive Director, State Water Resources Control Board, January 8, 2024. <https://www.friendsoftheriver.org/wp-content/uploads/2024/01/FOR-and-CSPA-letter-to-SWRCB-RE-Merced-River-Dry-in-2022.pdf>

culture, and communities that have come to rely on the recreation and tourism that the rivers provide.

Further, The Project and its EIR demonstrate that The Project goes against the Public Trust. In *National Audubon Society v. Superior Court* (1983) 33 Cal.3d 419, 446, the California Supreme Court made clear that “The state has an affirmative duty to take the public trust into account in the planning and allocation of water resources, and *to protect public trust* uses whenever feasible.” (Emphasis added.) Here, the severe negative impacts of The Project coupled with the world-class resources of the rivers and watersheds of the upper Delta system make it incumbent that all feasible mitigation and alternatives be implemented to protect the Public Trust.

The failure to analyze or disclose impacts to Public Trust beneficial uses in relation to The Project will have devastating impacts on not only the rivers and watersheds of the upper Delta, but also on the communities and economies that have come to rely on the current river ecology and in some cases required restoration measures for damages already done by massive exports from the SWP and CVP projects. Each upstream river system that in the Delta watershed has been deemed navigable, and has both thriving commercial outfitters, and abundant private recreation. The California Supreme Court has made clear that “before state agencies approve water diversions they should consider the effect of such diversions upon interests protected by the public trust, and attempt, so far as feasible, to avoid or minimize any harm to those interests. (*Id.* at p. 426.) Here, the severe impacts to the Public Trust resulting from The Project on the upper Delta rivers and watersheds must be avoided or at the minimum minimized as feasible.

In conclusion, The Project goes against both the Public Interest and Public Trust. Due to the severe impacts The Project would cause to the world-class environmental, recreational, and economic value of the upper Delta river system, the only remedy to satisfy the Public Interest and Public Trust is a withdrawal of The Project and denial of the associated water rights Petitions and Applications.

Additionally, much of the issues discussed in this Protest are discussed at length in the Protest of Sierra Club et al. on the Petition Requesting Changes in Water Rights of the Department of Water Resources for the Delta Conveyance Project, *incorporated herein*.