



**California Sportfishing
Protection Alliance**

"An Advocate for Fisheries, Habitat and Water Quality"

For IMMEDIATE RELEASE:

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Judge Vilardi Rejects DWR's 2009 Drought Water Bank Approval

Pleasanton, CA – Alameda County Superior Court Judge Alice Vilardi on Monday, March 15, 2010, ruled that the Governor and the California Department of Water Resources illegally approved the 2009 Drought Water Bank when they "improperly" exempted the water transfer program from the California Environmental Quality Act last year.

Governor Schwarzenegger's February 2009 "drought emergency" proclamation, while asserting an emergency, failed to declare "that there was a disaster, or identify a specific geographically described disaster-stricken area" as California law requires. Nothing in the proclamation, said the judge, provided "substantial evidence of a sudden, unexpected occurrence, involving a clear and imminent danger, demand immediate action to prevent or mitigate loss of or damage to life, health, property, or essential public services" and only cited possible consequences "months or years in the future." Because the Governor's proclamation also didn't waive CEQA requirements and actually directed DWR to protect the environment, the court ordered the agency to comply with CEQA even though the project is over.

In a suit brought last April 2009 by the Butte Environmental Council (BEC), the California Sportfishing Protection Alliance (CSPA) and the California Water Impact Network (C-WIN), the groups contested the Governor's 2009 drought emergency proclamation as an improper use of CEQA's emergency provisions, and that the state must still protect the environment.

"This decision sets a critical precedent," said Bill Jennings, chairman of CSPA, "because the state wants to do another water transfer program this year patterned after last year's. And they're relying on the same flawed data and reports." Last spring and summer, the State Water Board issued orders approving drought-related water transfers relying on the Governor's faulty declaration and DWR's environmental reviews. And this year, the state and the US Bureau of Reclamation are promoting another water transfer program that is modeled on last year's drought water bank.

"This is a great victory for the California public," said Carolee Krieger, executive director of the California Water Impact Network (C-WIN), "because it warns DWR and the Governor not to abuse their obligations to the people of California to follow the law and protect the Delta and the environment."

"DWR tried to rely on an old environmental study for an entirely different project for the drought water bank," said Barbara Vlamis, a C-WIN board member who helped prepare the lawsuit when she worked for BEC in 2009, "but when confronted with the obvious illegalities, they tried pulling an emergency out of their bag of tricks and the court saw through it." The old environmental study would have allowed up to 600,000 acre-feet to move from Sacramento Valley water sellers to buyers in the western San Joaquin Valley, but was itself never given final approval by the state.

Under that study, rice growers in the Sacramento Valley could use more than half that amount pumped as groundwater from their lands to continue cultivating their crops. "Some surface water transfers like these that would cross the Delta put north state groundwater resources at severe risk of the water table dropping and harming family farmers," Vlamis added.

“While we can expect an appeal, Judge Vilardi’s ruling is a marvelous reiteration that we remain bound by law and not gubernatorial fiat,” said CSPA’s Jennings. “You may not break the law to help a few political friends in the western San Joaquin Valley,” he added. “The decision is late in coming, but we still appreciate it. They didn’t have a single good fact on their side.”

“Droughts are normal occurrences in California,” said Krieger of C-WIN. “They are never emergencies, though they can be hard on some people. Instead we ought to be planning for more water conservation rather than concocting pretenses to grab water from the Sacramento Valley for growers who cultivate salty and selenium-laden lands in the western San Joaquin.”

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Background

The corporate agribusiness operations that are claiming water shortages are the most junior water rights holders in the western San Joaquin Valley. Many chose to convert from annual row crops to permanent crops, despite having among the least reliable water supplies in California agriculture and having created significant saline and selenium drainage problems.

DWR initially used the *Addendum to the Environmental Water Account Environmental Impact Statement/Environmental Impact Report* (2004) as compliance with the CEQA until the Governor issued an emergency proclamation. Under cover of the exemption, DWR and the U.S. Bureau of Reclamation (Bureau) planned to take enough Sacramento Valley surface water for thousands of acres of agriculture in the arid San Joaquin Valley (600,000 acre-feet, which is the equivalent amount of water for over a million homes) and allow more than half of that to come from groundwater (340,000 acre-feet) to continue rice production here. These transfers continued, but a much greater level, the “conjunctive management” long sought by the water agencies, which turns the northern Sacramento Valley groundwater basins into private water banks. Exporting significant water from the Sacramento Valley harms local farmers, fishermen, and residents and benefits the most arid region of California.

To demonstrate what the water agencies have known for years, the *Supplemental Environmental Water Account Environmental Impact Statement/Environmental Impact Report* in 2007 provides significant information regarding impacts to the areas of origin. For example:

1. *Groundwater Substitution (Upstream from the Delta) would result in a massive increase in the exploitation... of aquifer contents that will lead to increased impacts to the environment associated with dropping groundwater levels.*
2. *The legal ramifications of creating replenishment districts that own the contents of an aquifer system through groundwater banking are a disaster for existing groundwater dependent users who may lose their right to the resource.*
3. *A significant increase in pumping of the down-gradient portion of the area groundwater complex is likely to lead to an earlier (and more persistent) dewatering of these critical [salmon] rearing streams and may even result in the dewatering of larger streams that currently flow year-round and provide anadromous fish with natural spawning opportunities.*