

1 Osha R. Meserve (SBN 204240)
2 Patrick M. Soluri (SBN 210036)
SOLURI MESERVE, A LAW CORPORATION
3 510 8th Street, Sacramento, CA 95814
Telephone: (916) 455-7300; facsimile: (916) 244-7300
4 Emails: osha@semlawyers.com; patrick@semlawyers.com

5 Attorneys for Plaintiff
Central Delta Water Agency

6 [Additional Counsel/Parties Listed on Next Page]
7
8

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF FRESNO

11 Central Delta Water Agency,
California Sportfishing Protection Alliance,
12 California Water Impact Network, and
AquAlliance,

13 Plaintiffs,

14 v.

15 State Water Resources Control Board,

16 Defendant;

17
18 California Department of Water Resources,

19 Real Party in Interest.

Case No.

**COMPLAINT FOR
DECLARATORY RELIEF AND
PETITION FOR WRIT OF
TRADITIONAL MANDAMUS**

(Code Civ. Proc., §§ 1060, 1085)

1 Attorneys for Plaintiff Central Delta Water Agency:

2 Dante John Nomellini (SBN 040992)
3 Dante John Nomellini, Jr. (SBN 186072)
4 NOMELLINI, GRILLI & McDANIEL LAW OFFICE
5 235 East Weber Avenue, Stockton, California 95202
6 Telephone: (209) 465-5883; facsimile: (209) 465-3956
7 Emails: ngmplcs@pacbell.net; dantejr@pacbell.net

8 Attorney for California Sportfishing Protection Alliance and AquAlliance:

9 Michael B. Jackson (SBN 53808)
10 ATTORNEY AT LAW
11 P.O. Box 207, Quincy, California 95971
12 Telephone: (530) 283-1007; facsimile: (530) 283-4999
13 Email: mjatty@sbcglobal.net

14 Attorney for California Water Impact Network:

15 Roger B. Moore (SBN 159992)
16 LAW OFFICE OF ROGER B. MOORE
17 337 17th Street, Suite 211, Oakland, California 94612
18 Telephone: (510) 548-1401
19 Email: rbm@landwater.com
20
21
22
23
24
25
26
27
28

1 **INTRODUCTION**

2 1. Plaintiffs CENTRAL DELTA WATER AGENCY, CALIFORNIA
3 SPORTFISHING PROTECTION ALLIANCE, CALIFORNIA WATER IMPACT
4 NETWORK, and AQUALLIANCE bring this Complaint for Declaratory Relief and Petition
5 for Writ of Traditional Mandamus directed against the STATE WATER RESOURCES
6 CONTROL BOARD (“SWRCB”, “State Water Board” or “Defendant”), alleging as follows:

7 2. The SWRCB has failed to conduct proceedings on a Petition to Extend (“2009
8 Petition to Extend”) filed by Real Party in Interest, Department of Water Resources (“DWR”)
9 in 2009 with respect to the ability to divert from locations in the San Francisco Bay-Delta and
10 its tributaries. As discussed *infra*, DWR’s 2009 Petition to Extend sought to extend the time
11 DWR was required to construct certain water and storage facilities and put water allocated
12 under certain permits to full beneficial use. The water rights DWR claims in the 2009 Petition
13 to Extend entails millions of acre feet of water not previously put to beneficial use in a State
14 Water Project (“SWP”) system whose supply sources are already heavily oversubscribed.
15 Because the SWP was not built as originally envisioned, and “actual, reliable water supply” is
16 likely half or less of its water supply allocation amounts, state agencies have long known that
17 “there is a huge gap between what is promised and what can be delivered.” (*Planning and*
18 *Conservation v. Department of Water Resources* (2000) 83 Cal.App.4th 892, 908.) The
19 contracted amounts are sometimes described as “paper water,” and “fiscal and environmental
20 pressures militate against completion” of the SWP. (*Id.* at p. 914.)

21 3. In August 2022, the State identified that over the next 20 years, California could
22 lose 10 percent of its water supplies.¹ In January 2024, the State released a California Salmon
23 Strategy for a Hotter, Drier Future: Restoring Aquatic Ecosystems in the Age of Climate
24 Change.² In April 2024, the Pacific Fishery Management Council closed California’s
25 commercial and recreational ocean salmon fisheries through the end of the year; California
26

27 ¹ [https://resources.ca.gov/-/media/CNRA-Website/Files/Initiatives/Water-Resilience/CA-
Water-Supply-Strategy.pdf](https://resources.ca.gov/-/media/CNRA-Website/Files/Initiatives/Water-Resilience/CA-Water-Supply-Strategy.pdf)

28 ² [https://www.gov.ca.gov/wp-content/uploads/2024/01/Salmon-Strategy-for-a-Hotter-
Drier-Future.pdf](https://www.gov.ca.gov/wp-content/uploads/2024/01/Salmon-Strategy-for-a-Hotter-Drier-Future.pdf)

1 salmon fisheries were also closed in 2023. Despite the pressing need to properly manage
2 water rights in the public interest and according to the California Water Code, the SWRCB has
3 failed to act on DWR’s Petition to Extend and Plaintiffs’ timely filed Protests to that petition.
4 DWR’s Petition to Extend and the permits at issue in that Petition have since expired.

5 4. As described *infra*, Declaratory and Writ Relief is necessary to address an actual,
6 present controversy relating to SWRCB’s failure to act on DWR’s 2009 Petition to Extend and
7 Plaintiffs’ Protests because it violates applicable law and constitutes an unlawful “Cold
8 Storage” of water resulting in harm to Plaintiffs, the public trust, and the public interest under
9 *California Trout, Inc. v. State Water Resources Control Board* (1989) 207 Cal.App.3d 585
10 (*California Trout*). Additionally, Declaratory and Writ Relief is necessary because on
11 February 22, 2024, DWR filed a Petition to Change the diversion locations of the water rights
12 at issue in the now expired 2009 Petition to Extend, which the SWRCB subsequently noticed
13 on February 29, 2024, thereby commencing the water rights process for the most recent
14 version of new/isolated Delta Conveyance proposed by DWR. The proposed Delta
15 Conveyance would include massive new diversions on the Sacramento River in the
16 Sacramento-San Joaquin Delta for export to Southern California, the Southern San Joaquin
17 Valley and parts of the Bay Area. The proposed diversions could divert one-third to one-half
18 of the river during lower flows, and would worsen water quality throughout the Delta, and
19 imperil fish attempting to migrate through the Delta. However, during the 14 years that
20 Plaintiffs’ protests have remained unaddressed, the State Water Board, among others, has
21 recognized that outflows in the Delta watershed exceed by multiple times the amounts that
22 would be protective of the ecosystem.

23 **PARTIES**

24 5. Plaintiff CENTRAL DELTA WATER AGENCY (“CDWA”) is a political
25 subdivision of the State of California created by the California Legislature under the Central
26 Delta Water Agency Act, chapter 1133 of the statutes of 1973 (Wat. Code, Appendix, 117-1.1,
27 et seq.), by which CDWA came into existence in January of 1974. CDWA’s boundaries,
28 specified in Water Code Appendix section 117-9.1, encompass approximately 120,000 acres,

1 which are located entirely within both the western portion of San Joaquin County and the
2 “Sacramento-San Joaquin Delta” as defined in California Water Code section 12220. While the
3 lands within the agency are primarily agricultural, they also support numerous other uses
4 including recreational, wildlife habitat, open space, residential, commercial, and institutional
5 uses. CDWA is empowered to “sue and be sued” and to take all reasonable and lawful actions,
6 including pursuing legislative and legal action, that have for their general purpose: (1) to protect
7 the water supply of the lands within the agency against intrusion of ocean salinity; and/or (2) to
8 assure the lands within the agency a dependable supply of water of suitable quality sufficient to
9 meet present and future needs. The agency may also undertake activities to assist landowners
10 and local districts within the agency in reclamation and flood control matters. (See Wat. Code,
11 Appendix, 117-4.3, subd. (b) & 117-4.1, subds. (a) and (b), respectively.) CDWA may assist
12 landowners, districts, and water right holders within its boundaries in the protection of their
13 vested water rights and may represent the interests of those parties in water right proceedings
14 and related proceedings before courts of both the State of California and the United States to
15 carry out the purposes of the agency. (See Wat. Code, Appendix, 117-4.2, subd. (b).) Those
16 vested water rights include post-1914 water permits and licenses issued by the SWRCB and its
17 predecessor agencies, overlying rights, statutory rights, contract rights, riparian rights,
18 prescriptive rights, salvage rights, rights to recycled and recaptured water, and rights to artesian
19 flow.

20 6. Plaintiff CALIFORNIA SPORTFISHING PROTECTION ALLIANCE (“CSPA”)
21 is a California non-profit public benefit organization with its principal place of business in
22 Berkeley, California. CSPA’s organizational purpose is the protection, preservation, and
23 enhancement of fisheries and associated aquatic and riparian ecosystems of California’s
24 waterways, including Central Valley rivers leading into the Bay-Delta. This mission is
25 implemented through active participation in water rights and water quality processes, education
26 and organization of the fishing community, restoration efforts, and vigorous enforcement of
27 environmental laws enacted to protect fisheries, habitat, and water quality. Members of CSPA
28 reside along the Central Valley watershed and in the Bay-Delta where they view, enjoy, and

1 routinely use the Delta ecosystem for boating, fishing, and wildlife viewing. CSPA’s members
2 derive significant and ongoing use and enjoyment from the aesthetic, recreational, and
3 conservation benefits of the Bay-Delta ecosystem.

4 7. Plaintiff CALIFORNIA WATER IMPACT NETWORK (“CWIN”) is a California
5 non-profit public benefit organization with its principal place of business in Santa Barbara,
6 California. CWIN’s organization purpose is the protection and restoration of fish and wildlife
7 resources, scenery, water quality, recreational opportunities, agricultural uses, and other natural
8 environmental resources and uses of the rivers and streams of California, including the Bay-
9 Delta, its watershed and its underlying groundwater resources. CWIN has members who reside
10 in, use, and enjoy the Bay-Delta and inhabit and use its watershed. They use the rivers of the
11 Central Valley and the Bay-Delta for nature study, recreation, and aesthetic enjoyment.

12 8. Plaintiff AQUALLIANCE is a California public benefit corporation. Its mission
13 is to defend northern California waters and the ecosystems these waters support and to challenge
14 threats to the hydrologic health of the Sacramento River watershed. This includes escalating
15 attempts to divert and withdraw more water from the hydrologic region. AquAlliance’s
16 members include farmers, scientists, businesses, educators, and residents all of whom have
17 significant financial, recreational, scientific, aesthetic, educational, and conservation interests in
18 the aquatic and terrestrial environments that rely on waters of the Sacramento River Watershed
19 and Bay-Delta estuary. This hydrologic system provides water for orchards, homes, gardens,
20 businesses, wetlands, streams, rivers, terrestrial habitat, and myriad species, which in turn allows
21 AquAlliance members to live, farm, fish, hunt, cycle, photograph, camp, swim, and invest in
22 northern California.

23 9. Defendant STATE WATER RESOURCES CONTROL BOARD (“SWRCB”,
24 “State Water Board” or “Defendant”) is one of six branches of the California Environmental
25 Protection Agency. The SWRCB regulates the allocation of water resources within the state and
26 is the primary agency charged with protecting the quality of waters of the state. The Mission
27 Statement listed on the SWRCB’s website is: To preserve, enhance, and restore the quality of
28 California’s water resources and drinking water for the protection of the environment, public

1 health, and all beneficial uses, and to ensure proper water resource allocation and efficient use,
2 for the benefit of present and future generations. Relevant to the present action, the SWRCB has
3 regulatory authority over Petitions to Change the location of a water right diversion as well as
4 Petitions to Extend the time to put water to full beneficial use.

5 10. Real Party in Interest the DEPARTMENT OF WATER RESOURCES (“DWR”)
6 manages state-owned water infrastructure, such as dams, reservoirs, and aqueducts and water
7 rights associated with such infrastructure. Relevant to the present action, DWR operates the
8 State Water Project (“SWP”), which provides water for municipal, agriculture and other
9 purposes throughout the state. DWR holds certain water rights permits issued by the SWRCB
10 associated with the SWP that are at issue in this Complaint.

11 11. The true names and capacities, whether individual, corporate, associate,
12 governmental, co-conspirator, partner or alter-ego of those Defendants sued herein under the
13 fictitious names of DOES 1 through 10, inclusive, are not known to Plaintiffs, who therefore
14 sue those Defendants by such fictitious names. Plaintiffs will ask leave of Court to amend this
15 Complaint and insert the true names and capacities of these Defendants when the same have
16 been ascertained. Plaintiffs are informed and believe and, on that basis, allege, that Defendants
17 designated herein as DOE Defendants are legally responsible in some manner for the events and
18 happenings alleged in this Complaint, and that Plaintiffs alleged injuries were proximately
19 caused by said Defendants’ conduct.

20 **FACTUAL BACKGROUND**

21 **A. DWR’s Water Rights Permits at Issue**

22 12. DWR holds several water rights permits issued and administered by the SWRCB,
23 including the following permits: 16478, 16479, 16481, and 16482 (“Permits”). Pursuant to its
24 Permits, DWR was authorized to “divert and redivert” up to 10,350 cubic feet per second (“cfs”)
25 at the Harvey O. Banks Pumping Plant located near Tracy, California, for direct use and storage
26 each year. The Permits are summarized as follows:

- 27 ● Permit 16478 issued to DWR September 26, 1972, Application 5630 originally filed
28 by the California Department of Finance on July 30, 1927, and later transferred to

1 DWR. Under the original permit, DWR was authorized to divert and use water from
2 the Feather River for the purposes of irrigation, domestic, municipal, industrial,
3 salinity control, recreation, fish and wildlife enhancement, and incidental power.

- 4 ● Permit 16479 issued to DWR September 26, 1972, Application 1443 originally filed
5 by the California Department of Finance on August 24, 1951, and later transferred to
6 DWR. Pursuant to the permit, DWR was authorized to divert and use water from the
7 Feather River and the Sacramento-San Joaquin Delta for the purposes of irrigation,
8 domestic, municipal, industrial, salinity control, recreational, fish and wildlife
9 enhancement purposes, and incidental power.
- 10 ● Permit 1648 issued to DWR September 26, 1972, Application 17512 originally filed
11 by the California Department of Finance on August 25, 1951, and later transferred to
12 DWR. DWR was authorized to divert and use water from Italian Slough, a tributary to
13 the Old River, and from the Sacramento-San Joaquin Delta Channels. The water could
14 be used for irrigation, domestic, municipal, industrial, salinity control, recreation, fish
15 and wildlife enhancement, and incidental power purposes.
- 16 ● Permit 16482 issued to DWR September 26, 1972, Application 17512 originally filed
17 by the California Department of on March 15, 1957, and later transferred to DWR.
18 DWR was authorized to divert and use water from Italian Slough, the Sacramento-San
19 Joaquin Delta Channels, and the San Luis Creek for purposes of irrigation, domestic,
20 municipal, industrial, salinity control, recreation, fish and wildlife enhancement, and
21 incidental power.

22 These permits include diversion, rediversion and storage for salinity control at numerous
23 facilities including San Luis Dam and Forebay.

24 13. DWR's Permits at issue in this Complaint originally required the completion of
25 construction of specific diversion projects by December 1, 1980, and the application of water
26 allotted under the permits to full beneficial use by December 1, 1990. DWR subsequently
27 petitioned for and received limited extensions of time on both these deadlines. As amended,
28 these Permits required that DWR complete construction pursuant to the permits by December

1 31, 2000 [Term 6], and put the water allocated to DWR pursuant to the permits (10,350 cubic
2 feet per second) to full beneficial use no later than December 31, 2009 [Term 7].

3 14. Subsequent to DWR's initial 1990 deadline to put the permitted water to full
4 beneficial use, related conditions and requirements of the Permits at issue have been the subject
5 of extensive proceedings, decisions, orders, including those of the SWRCB. For example:

- 6 ● The SWRCB adopted its most recent complete update to its Water Quality Control
7 Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay-Delta
8 Plan) in May 1995.
- 9 ● In Water Rights Decision 1641, issued in December 1999 and revised in March 2000
10 (WR Order 2002-02), the SWCRB required DWR and others to meet the Bay-Delta
11 Plan's water quality objectives, including requirements protecting beneficial uses in
12 the southern Delta, and conditioned DWR's pumping and export activities on meeting
13 these standards.
- 14 ● Following DWR's recurrent failure to meet D-1641 water quality standards, including
15 those protecting the internal southern Delta, the SWRCB adopted WR Order 2000-
16 0006. Due to the threatened violation of permitting and licensing conditions, the
17 SWRCB issued a Cease and Desist Order ("CDO") setting a firm deadline of July 1,
18 2009 to remove this threat.
- 19 ● Despite DWR's failure to meet the CDO deadline and over objections that included
20 those of the Plaintiffs, the SWRCB later extended the CDO compliance period at
21 DWR's request on January 5, 2010 in WR Order 2010-002. Without setting a certain
22 date, the Order indicated it was meant to accommodate the SWRCB's pending review
23 of the Bay-Delta Plan, while also seeking to avoid "undue delay" in reaching and
24 implementing a revised compliance plan.³

25 As of December 2009, however, DWR had failed to put the water allocated under the
26 Permits to full beneficial use as required by the Permits and in accordance with applicable law
27 and permitting conditions.

28 **B. DWR's 2009 Petition to Extend Delta Diversion Permits to 2015**

15. On December 31, 2009, DWR filed a further Petition for Permit Time Extension
with the SWRCB ("2009 Petition to Extend"), which was the last day of DWR's prior extension.
DWR's Petition is attached as Exhibit 1.

³ As detailed further below, more than 14 years later, the SWRCB has neither completed
review of the Bay-Delta Plan nor ensured DWR's compliance with laws and permitting
conditions.

1 16. In its 2009 Petition to Extend, DWR stated that it had not put the water allocated
2 under the permits to full beneficial use as required by law “due to various factors DWR has not
3 directly diverted, rediverted or diverted to storage the maximum amounts allowed annually
4 under the [Permits].” DWR requested it be allowed an additional five-year period (to 2015) to
5 put water allocated under its permits to full beneficial use.

6 17. DWR additionally informed the SWRCB that it was planning to proceed with a
7 project to divert water under the Permits through the Delta then known as the Bay-Delta
8 Conservation Plan (“BDCP”), portraying the BDCP planning process as evidence of DWR’s
9 “due diligence” to put water under the permits to full beneficial use.

10 18. Water Code section 1396 requires a permittee such as DWR to undertake project
11 construction and apply water to beneficial use with due diligence, in accordance with the Water
12 Code, the SWRCB’s regulations, and the terms specified in the permit. (See Wat. Code, §§
13 1395, 1396, 1397.) The SWRCB may approve a request for an extension of time only if the
14 SWRCB finds that there is good cause for the extension. (Wat. Code, § 1398, subd. (a).) The
15 SWRCB’s regulations allow an extension of time to be granted only on such conditions in the
16 public interest, and on a showing that (1) due diligence has been exercised, (2) failure to comply
17 with previous time requirements has been occasioned by obstacles that could not reasonably be
18 avoided, and (3) satisfactory progress will be made if an extension of time is granted. (Cal.
19 Code Regs., tit. 23, § 844.) In determining whether there is good cause to approve a request for
20 an extension of time to complete the beneficial use of water, the SWRCB must consider whether
21 DWR exercised “due diligence” in the past in putting water to beneficial use. Due diligence
22 requires a demonstrable effort to put water to beneficial use within the time-period specified in
23 the permits. Due diligence is not established simply because beneficial use may increase as
24 demands increase. (*California Trout, supra*, 207 Cal.App.3d at 585).

25 19. The requirement that an appropriation of water be completed within a reasonable
26 time with the exercise of due diligence is a long-standing principle of California water law
27 intended to protect the public interest by preventing what is known as the unlawful “Cold
28 Storage” of water rights. Unlawful Cold Storage occurs when an appropriator of water is

1 allowed to artificially lock up high-levels of water rights under permits issued by the SWRCB
2 for future use despite the inability to apply such waters to a present beneficial use. Such Cold
3 Storage is not permitted by law. (*California Trout, supra*, 207 Cal.App.3d at 618.)

4 20. The SWRCB “shall reject an application when the proposed appropriation would
5 not best conserve the public interest.” (Wat. Code, § 1255.) SWRCB implementing regulations
6 further explain that reasonable promptness is required:

7 An application will be denied when it appears after hearing or a proceeding in lieu
8 of hearing that (a) the applicant does not intend to initiate construction of the
9 works required for the contemplated use of water within a reasonable time and
10 thereafter diligently prosecute the construction and use of water to completion, or
11 (b) the applicant will not be able to proceed within a reasonable time, either
12 because of absence of a feasible plan, lack of the required financial resources, or
13 other cause.

14 (Cal. Code Regs., tit. 23, § 840.)

15 21. Pursuant to applicable law, and given DWR’s own acknowledgement in the 2009
16 Petition to Extend that it had not diligently put water under its permits to full beneficial use, the
17 SWRCB had various options to proceed on DWR’s 2009 Petition to Extend including: (a)
18 revoking DWR’s Permits for failure to put water to full beneficial use (Wat. Code, § 1398), or
19 (b) issuing licenses to DWR to divert the amount of water actually put to prior beneficial use by
20 DWR, which would be an amount less than authorized in DWR’s Permits (Wat. Code, § 1610).

21 22. On or about August 19, 2010, SWRCB published a public notice regarding
22 DWR’s December 2009 “Petition to Extend” and requested that any Protests to the Petition from
23 the public or impacted water rights holders be filed on or before September 20, 2010.

24 23. Plaintiffs timely filed protests against DWR’s 2009 Petition to Extend
25 (“Protests”). (See, e.g., Exhibit 2 [Plaintiffs’ Protests].) The bases of Plaintiffs’ Protests
26 included, but were not limited to:

- 27 ● DWR had not shown adequate due diligence as required by law. (Wat. Code, §§
28 1395, 1396, 1397; Cal. Code Regs., tit. 23, §§ 840, 844.)
- DWR’s proposed extension of time to put water to beneficial use under its permits,
unless properly conditioned, would adversely affect riparian and prior appropriative
rights and violate the Delta Protection Statutes. (Wat. Code, § 12200-12205.)

- 1 ● DWR failed to explain how much water can be put to a beneficial use.
- 2 ● DWR failed to state the maximum amounts of water it had annually directly diverted
- 3 and diverted to storage under each water right.
- 4 ● DWR’s own actions led to its failure to timely put water to beneficial use. (Cal.
- 5 Code Regs., tit. 23, §§ 840, 844.)
- 6 ● Granting DWR an extension of time would harm the public trust and would not be in
- 7 the public interest. (Wat. Code, §§ 1243; 1243.5)
- 8 ● DWR’s petition did not comply with the California Environmental Quality Act (Pub.
- 9 Resources Code, § 21000 et seq. [“CEQA”]).
- 10 ● DWR’s requested extension would, if approved, enable continuing violation of Bay-
- 11 Delta water quality objectives, permitting conditions, and numerous other legal
- 12 requirements, such as the federal Clean Water Act, state Porter-Cologne Water
- 13 Quality Control Act, Fish and Game Code section 5937, multiple provisions of the
- 14 Water Code protecting the Delta and San Joaquin River, and article X, section 2 of
- 15 the California Constitution.

16 24. On or about February 10, 2011, Protestants were notified that DWR intended to
17 place its Permits into “Cold Storage” until DWR completed the future BDCP Project:

18 DWR recognizes that full beneficial use will not be reached in the next five years
19 [2015] and that additional time will be required to reach full beneficial use.
20 However, since the BDCP will offer the best opportunity to provide a realistic
21 project of future, long-term SWP operations, good cause exists to extend DWR
until the BDCP is completed. At the end of the extension period [2015] DWR
anticipates filing for a longer-term extension

22 (See attached Exhibit 3.)

23 25. On or about, February 11, 2011, SWRCB staff noted that it was not likely that
24 Plaintiffs and DWR could resolve the Protests; and therefore, recommended that the SWRCB
25 hold a hearing on DWR’s Extension. SWRCB staff also noted allowing DWR to use the future
26 BDCP project as the basis for satisfactory due diligence raised important issues, including Cold
27 Storage. Finally, SWRCB staff hypothesized that DWR would try to file a Notice of Exemption
28 to satisfy the CEQA requirements for the time extension. (See attached Exhibit 4.)

1 26. DWR is required to file annual reports with the SWRCB of its progress towards
2 completion of the project associated with its permits and placement of water to full beneficial
3 use. SWRCB's online data information system "EWRIMS" contains a summary of the final
4 submitted versions of DWR's annual "Progress Report[s] by Permittee" pursuant to the permits
5 for the years 2010 through water year 2023. DWR's 2010 reports were filed on June 30, 2011,
6 and state that:

7 Maximum diversion rate, total annual diversion to storage and maximum annual
8 use are expected to increase as demands within the SWP service area increase.
9 DWR filed a Petition for Time Extension with the State Water Resources Control
10 Board on December 31, 2009. There are a number of factors creating uncertainty
11 as to the ultimate demands for project water and the quantities available and
12 timing of diversions including the current Bay-Delta Conservation Plan process.
13 At this time, DWR is requesting a 5-year extension to allow time for the current
14 planning processes to be completed. Following completion of the BDCP process
15 DWR should be better able to estimate future demands for Project water.

16 Among other missing information in DWR's reports is any reference to progress towards
17 completion of an environmental document for the Time Extension. The estimated completion
18 date for the BDCP project was stated to be December 31, 2035. This language and the
19 estimated completion date is duplicated in DWR's filed reports for the years 2011 through 2014
20 (the 2014 report was submitted on June 30, 2015).

21 27. Ultimately, from 2011 to today, the SWRCB has taken no action on DWR's 2009
22 Petition to Extend or Plaintiffs' Protests filed in 2010, including failing to hold any hearing on
23 the Protests as recommended by its own staff. No explanation has been provided to Plaintiffs
24 regarding SWRCB's failure to act.

25 28. In 2015, before Plaintiffs' Protests were resolved, and after subsequent reports cast
26 doubt upon the ability of BDCP either to protect the Bay Delta or qualify as a conservation plan,
27 DWR submitted a petition to the SWRCB to change the point of diversion of the water rights
28 associated with DWR's Petition to Extend pursuant to a "new" project known as the California
WaterFix Project ("WaterFix"), also designated as BDCP Alternative 4A, which replaced
DWR's prior BDCP project. The WaterFix project would have diverted water from the
Sacramento River near Clarksburg via three new intakes and transport the water south to the
Banks Pumping Plant (Clifton Court Forebay) through "twin tunnels" beneath the California

1 Delta. Each of the three new intakes would have diverted a “maximum of 3,000 cfs for a total
2 combined diversion capacity of 9,000 cfs.” Notably, the WaterFix project differed substantially
3 from the original projects under the permits originally approved by the SWRCB 43 years earlier
4 in 1972.

5 29. The original points of diversion approved in the 1972 DWR Permits included
6 several diversion and re-division locations downstream of Lake Oroville. With respect to the
7 Bay-Delta, the permits included in-delta diversion points at Italian Slough, the Banks pumping
8 plant near Tracy California, and a surface canal at Hood California commonly referred to as
9 the “Peripheral Canal.” (See SWRCB Decisions 1275, 1291.) The Peripheral Canal would
10 have conveyed water from a single diversion just south of Hood “along the eastern boundary
11 of the Delta to Italian Sough, releasing water into the Delta channels en route” to Clifton Court
12 Forebay. (See SWRCB Decision 1291, Plate 2, attached as Exhibit 5.)⁴ In contrast, the
13 proposed Delta Conveyance Project would divert water from two new diversions, one north of
14 Hood and one south of Hood, and convey it through a tunnel beneath the Delta, with no
15 releases into the Delta, to a new pumping plant and new aqueduct complex near Mountain
16 House in the south Delta and discharging it to the existing Bethany Reservoir at the beginning
17 of the California Aqueduct. (See DWR Water Rights Change Petition, February 21, 2024,
18 Map 6, attached as Exhibit 6.) Not only does the Delta Conveyance Project differ physically
19 from the original 1972 DWR Permits, its impacts differ substantially because the proposed
20 tunnel and new diversion locations will result in less water flowing through the Delta than
21 originally envisioned and approved. On October 30, 2015, the SWRCB issued a notice of
22 public hearing and pre-hearing for the WaterFix project. In Footnote 11 of that notice, the
23 SWRCB acknowledged that Plaintiffs’ Protests and DWR’s 2009 Petition to Extend remained
24 unresolved:

25 The permittee is limited to the maximum annual quantity put to use during the
26 permit development schedule unless the permittee is granted an extension of time
27 to extend the development schedule. DWR’s time to complete construction and
beneficial use of water for its subject permits elapsed on December 31, 2000, and
December 31, 2009, respectively. On December 31, 2009, DWR filed petitions to

28 ⁴ California voters defeated a ballot initiative to fund and build the Peripheral Canal in
1982.

1 extend the development schedule until December 31, 2015, for the subject four
2 permits and two additional DWR permits. The State Water Board noticed all six
3 DWR petitions on August 19, 2010, and received eight protests. The protests have
4 not been resolved and the petitions for time extensions are still pending.

5 30. Plaintiffs and others timely objected to the failure of the SWRCB to address the
6 protests filed against DWR's 2009 Petition to Extend prior to commencing the hearing on the
7 WaterFix change petition.

8 31. On June 29, 2016, DWR updated the language in its 2015 Progress Report by
9 Permittee regarding the Permits at issue in its 2009 Petition to Extend to read (in part):

10 Maximum annual diversion to storage at Lake Oroville and peak rate of direct
11 diversion authorized under Permit 16478 have been reached. However, additional
12 time is required to maximize the total annual diversion and beneficial use
13 authorized under Permit 16478 and the remaining permits governing SWP
14 operations at Oroville and in the Delta, Permits 16479, 16481, 16482 and 16483.
15 Annual diversions to storage are dependent on numerous factors including end of
16 season storage, annual hydrology, SWP demands and regulatory constraints.
17 Maximum diversion rate, total annual diversion to storage and maximum annual
18 use are expected to increase as demands within the SWP service area increase.
19 DWR filed a Petition for Time Extension with the State Water Resources Control
20 Board on December 31, 2009. There are a number of factors creating uncertainty
21 as to the ultimate demands for project water and the quantities available and
22 timing of diversions including the Bay-Delta Conservation Plan (BDCP) process,
23 currently California WaterFix (CWF) and EcoRestore. Following completion of
24 the CWF process DWR should be better able to estimate future demands for
25 Project water. DWR filed a joint Petition for Change with the Bureau of
26 Reclamation to add three new points of diversion in the north Delta to allow the
27 construction of the CWF facilities.

28 The update is significant in that the BDCP is replaced by WaterFix and EcoRestore, and the new
petition for the WaterFix Tunnels is acknowledged. The estimated completion date remained
December 31, 2035. DWR's reports for 2016, 2017, and 2018 remained substantively identical.

32. On July 21, 2017, DWR certified the BDCP/California WaterFix Final
Environmental Impact Report ("EIR") and approved Alternative 4A as its project. In the
2016 – 2019 time period, the SWRCB held a water rights hearing process regarding DWR's
change petition to permit implementation of the WaterFix project.

33. On December 12, 2018, through State Water Board Resolution No. 2018-0059, the
State Water Board adopted amendments to the Bay-Delta Plan and Final Substitute
Environmental Document ("SED") establishing flow objectives for the Lower San Joaquin
River and its three major tributaries (the Stanislaus, Tuolumne, and Merced Rivers) and revised

1 southern Delta salinity objectives, known as the “Phase I” Update. That same month, the Delta
2 Stewardship Council issued a draft determination that DWR failed to support its Certification of
3 Consistency with the Delta Plan finding with substantial evidence (Wat. Code, § 85225), and
4 DWR subsequently withdrew its Certification of Consistency for WaterFix.

5 34. On May 2, 2019, ten years after DWR filed its 2009 Petition to Extend and amid
6 multiple litigation challenges to WaterFix by Plaintiffs and others, among other setbacks, DWR
7 withdrew its 2015 Petition for Change related to the WaterFix Project, rescinded all WaterFix
8 approvals, and decertified the BDCP/WaterFix EIR. The same month, DWR also rescinded
9 several WaterFix bond resolutions, which Plaintiffs and others had also challenged in DWR’s
10 then-pending validation action. Despite these developments, DWR’s Petition to Extend and
11 Plaintiffs’ Protests continued to remain unresolved.

12 35. On April 29, 2020, DWR submitted its 2019 Progress Report by Permittee and
13 amended the language slightly to remove any mention of its withdrawn WaterFix petition for
14 change and referred to Voluntary Agreements, Delta Conveyance, and EcoRestore. This
15 language is cut-and-pasted for the years 2020 – 2023 such that the exact same language is used
16 to describe DWR’s progress for water years 2019 to 2023, the 2023 report submitted on
17 February 1, 2024. None of these reports from DWR mentions the status of the environmental
18 document for the Time Extension, let alone a report on progress towards completion. Instead,
19 these progress reports continue to state that “New information will be developed to amend the
20 petition for time extension.”

21 36. In July 2022, following a January 2020 Notice of Preparation, DWR released the
22 Draft EIR for the current iteration of Delta Conveyance, now known as the Delta Conveyance
23 Project. The Delta Conveyance Project while having many similarities to the prior WaterFix
24 Project, proposes a single-tunnel to transport water from new diversions on the Sacramento
25 River near the communities of Hood and Courtland through a tunnel to the Bethany Reservoir.
26 As with the WaterFix project, the Delta Conveyance Project differs substantially from the 1972
27 DWR Permits approved by the SWRCB in 1972.

1 37. The SWRCB’s comments on DWR’s January 2020 Notice of Preparation for the
2 Draft EIR for the Delta Conveyance Project raised the issue of DWR’s unresolved petition for
3 extension of time, which is necessary to the Delta Conveyance Project:

4 DWR and Reclamation having pending petitions to extend the deadlines, which
5 have expired, to maximize the beneficial use of water under their water right
6 permits for the SWP and CVP, respectively. These petitions have been noticed
7 and protested, but the Division of Water Rights has not processed them further due
8 to a lack of environmental documentation. DWR and Reclamation may also wish
9 to amend the petitions (the DWR petition only requests a time extension until
10 2015), which would require that the petitions be re-noticed. Although these
11 petitions can be processed separately from a water right change petition for the
12 Delta Conveyance Project, the EIR for the Delta Conveyance Project should
13 address how the approval or disapproval of time extension petitions would relate
14 to SWP and CVP operations with the new conveyance facilities. Specifically, the
15 analysis of SWP and CVP operations in the EIR should be consistent with the fact
16 that, absent State Water Board approval of time extension petitions, SWP and
17 CVP exports, with or without approval of the new proposed points of diversion,
18 are limited to the maximum amount of water put to beneficial use before the
19 deadlines to maximize use contained in the permits. (See Wat. Code, §§ 1397,
20 1610.5; Cal. Code Regs., tit. 23, § 844.)

21 (Final EIR Volume 2, Chapter 4, Table 4-2, pp. 245-246.) In response to this comment, DWR
22 stated that “DWR will file a separate petition to address time extension.” (Final EIR, Comment
23 Response 533-130.) Yet, to date DWR has filed no such petition.

24 38. In December 2022, a civil rights complaint filed under Title VI of the Civil Rights
25 Act of 1964 with the United States Environmental Protection Agency (“EPA”), alleged that the
26 SWRCB discriminated against California tribes and communities of color in the Bay-Delta
27 region by failing to update water quality standards and by intentionally excluding tribes and
28 Black, Asian, and Latino residents from participating in policymaking processes (“EPA
Complaint”).⁵

39. The EPA Complaint alleges that the out-of-date water quality standards — last
updated in the mid-1990s — have allowed a proliferation of harmful algal blooms, collapse of
native fish species, and loss of native riparian vegetation. According to the EPA Complaint, this
delay results in particularly severe impacts for Bay-Delta tribes by impairing their practice of
culture, ceremony, religion, and subsistence, which are intimately tied to the waterways. In

⁵ Available at: <https://www.restorethedelta.org/wp-content/uploads/2022-12-16-Bay-Delta-Complaint-and-Petition.pdf>.

1 addition, the EPA Complaint alleges that communities of color, especially in and around the
2 South Stockton area, are exposed to the annual toxic algal blooms and alienated from the
3 stagnant and unhealthy waterways flowing near their communities. The EPA Complaint claims
4 that in lieu of timely updating water quality and flow standards to protect beneficial uses, the
5 SWRCB has a pattern and practice of waiving outflow restrictions, salinity objectives, and
6 temperature controls during continuing and increasingly frequent extreme drought conditions.
7 Among other forms of relief, the Complaint requested that EPA withhold federal permits and
8 approvals for significant new water export projects in the Bay-Delta Watershed, including the
9 Delta Conveyance Project, until the SWRCB comes into compliance with its obligations under
10 Title VI and the Clean Water Act.

11 40. On August 8, 2023, EPA issued a decision accepting the EPA Complaint for
12 investigation of the alleged discriminatory mismanagement of water quality in Bay-Delta
13 Watershed. This is the first time EPA has accepted a complaint alleging discrimination in the
14 management of water against a California state or regional agency.

15 41. On September 7, 2023, the SWRCB informed EPA that the SWRCB agrees to
16 engage in negotiations with EPA toward the execution of an Informal Resolution Agreement to
17 address the issues accepted by the EPA for investigation. The EPA consequently issued a letter
18 on September 12, 2023, tolling the deadline to issue preliminary findings of investigation
19 pending a facilitated Informal Resolution Agreement negotiation process with the SWRCB and
20 complainants. Informal Resolution Agreement negotiations remain pending.

21 42. None of the critically important public interest issues raised in the EPA Complaint
22 have been addressed by either DWR or the SWRCB with respect to DWR's 2009 Petition to
23 Extend, as required under the Water Code. (Wat. Code, §§ 106.3; 1242.5; 1243.5.)

24 43. In December 2023, the State Water Board released its Draft Staff Report in
25 Support of Sacramento/Delta Update as part of the "Phase 2" Update SED. This part of the
26 Bay-Delta Plan focuses on the Sacramento River and its tributaries, Delta eastside tributaries
27 (including the Calaveras, Cosumnes, and Mokelumne Rivers), interior Delta flows, and Delta
28 outflows, and includes consideration of flow requirements for the protection of fish and wildlife.

1 44. The last major update to the flow objectives for the protection of fish and wildlife
2 beneficial uses in the Sacramento River watershed and Delta occurred in 1995. That update was
3 largely consistent with agreements reached in the early 1990s establishing new outflow and
4 other requirements.

5 45. According to the SWRCB’s SED, since the time the Bay-Delta Plan was last
6 updated and implemented, populations of native aquatic species in the Bay-Delta watershed
7 have shown significant signs of decline due to a combination of factors, including hydrologic
8 modifications, non-flow physical habitat degradation, water quality impairments, and climate
9 change. Scientific information indicates that restoration of more natural flow functions is
10 needed to address these declines in an integrated fashion with physical habitat improvements.

11 46. The SWRCB has also observed that existing claimed consumptive (not including
12 power and other non-consumptive uses) water rights in the Bay-Delta watershed already are
13 many times the total annual average unimpaired flows in the watershed. The SED recognizes
14 that “[a]verage regulatory minimum Delta outflows are only about 5 MAF [million acre-feet], or
15 about a third of current average outflows and less than 20 percent of average unimpaired
16 outflows. Existing regulatory minimum Delta outflows would not be protective of the
17 ecosystem, and without additional instream flow protections, existing flows may be reduced in
18 the future, particularly with climate change and additional water development absent additional
19 minimum instream flow requirements that ensure flows are preserved instream when needed for
20 the reasonable protection of fish and wildlife.” (SED, p. 1-9.) Plaintiffs, among others,
21 submitted comments to SWRCB on the SED in January 2024.

22 47. In December 2023, and prior to any final action on the SWRCB’s Phase II Update,
23 DWR certified its EIR and approved the Delta Conveyance Project. The legal adequacy of those
24 approvals is currently the subject of multiple litigation challenges, including those of Plaintiffs,
25 in Sacramento County Superior Court.

26 48. Plaintiffs have made several attempts over the years to encourage the SWRCB to
27 act on the 2009 Extension Request and the Protests, including during the SWRCB proceedings
28 regarding the WaterFix Change Petition that commenced in 2015. Most recently, on June 6 and

1 July 7, 2023, and March 15, 2024, Plaintiffs sent written requests to the SWRCB to hold a
2 hearing on the Extension and Protests. (See attached Exhibit 7.) The SWRCB has continued to
3 fail to act, despite these reasonable requests.

4 49. On February 22, 2024, DWR filed a Change Petition for the newly proposed Delta
5 Conveyance Project (described *supra*), which relies on the same water rights at issue in the 2009
6 Petition to Extend.

7 50. On February 29, 2024, SWRCB issued written Notice of DWR's water rights
8 change petition for its Delta Conveyance Project, including procedures for protesting that
9 petition. Protests must be filed by April 29, 2024.

10 51. As of the date of this Complaint, DWR's 2009 Petition to Extend remains
11 unresolved by the SWRCB, and SWRCB has not conducted any hearing on DWR's Petition to
12 Extend. Likewise, DWR has not resolved Plaintiffs' Protests via the protest resolution process.
13 (See Wat. Code, § 1333.) DWR has failed, and continues to fail, to demonstrate sufficient due
14 diligence to put the amount of water allocated under the Permits to full beneficial use other than
15 to claim it is developing new information to amend its 2009 Petition to Extend.

16 52. To put the matter into perspective, water allocated under the Permits has not been
17 diligently put to full beneficial use, and thus has been held in Cold Storage, for over 50 years
18 using the 1972 Permit date, and for over 90 years using the 1927 application date for application
19 5630.

20 53. Since the expiration of the complete beneficial use phase of its permits at the end
21 of 2009, DWR has reported no progress towards completing the environmental documentation
22 required by CEQA for a time extension. Despite the construction phase of the permits expiring
23 at the end of 2000, DWR has twice filed Petitions for Changes in Points of
24 Diversion/Rediversion (each requiring over a decade of construction). Subsequent to the 2009
25 Petition to Extend, DWR certified two separate EIRs for two different Delta Conveyance
26 projects, which are arguably the most controversial water project in California history. Yet no
27 environmental document was prepared to support the extension of the valid dates of the permits
28 under which DWR now proposes *to add 6,000 cfs diversion capacity.*

1 54. In summary, DWR has made no progress towards completing the application of
2 water to beneficial use, has made no progress towards completing construction of Delta
3 Conveyance, failed to complete an environmental document for the 2009 Permit to Extend, and
4 has reported all this lack of progress to the SWRCB. Instead of returning the petitions for lack
5 of diligence and referring the permits to the licensing section to license amounts actually put to
6 beneficial use during the permits' valid development period, the SWRCB continues to issue
7 notices of changes to DWR's expired permits, most recently on February 29, 2024.

8 **SWRCB'S FAILURE TO ACT ON DWR'S 2009 PETITION TO EXTEND ALLOWS**
9 **UNLAWFUL COLD STORAGE BY DWR**

10 55. *California Trout, supra*, 207 Cal.App.3d at 618 makes clear that courts have
11 authority over SWRCB decisions regarding petitions for extension of time, and specifically
12 holds that Cold Storage of water rights is not allowed. Here, SWRCB's inaction on the 2009
13 Petition to Extend directly interferes with the State's ability to manage limited water supplies to
14 adapt to changing hydrologic conditions and to consider the development of water by other users
15 in the decades that have passed since DWR initially made the subject Applications.

16 56. As discussed *supra*, a critical aspect of due diligence is the principle that "Cold
17 Storage" is not permitted. While the concept of "Cold Storage" had existed for some time, the
18 courts have made clear that neither the SWRCB nor a permittee can use a series of extensions to
19 avoid the requirement to put water to a reasonable and beneficial use. (*California Trout, supra*,
20 207 Cal.App.3d at 618.) This principle applies even in cases where the water may be needed for
21 future municipal needs or where facilities are constructed, but no present need for water exists.

22 57. Since the *California Trout* decision, the SWRCB has disallowed Cold Storage
23 with respect to numerous permit extension petitions for the very reason that under California law
24 a permit cannot be used to "reserve" high priority water rights in regulatory "storage" for use at
25 some point in the future. For example:

- 26 • In the matter of In Re: Petition for Reconsideration of Irish Beach Water District,
27 (2006) Order WR 2006-0015-EXEC (Irish Beach), the SWRCB denied an extension
28 of a permit to a small water district in Mendocino County based on the principle of

1 “Cold Storage” based on the finding that the District had not put water to full
2 beneficials use even though there was an existing completed project that would have
3 allowed for such full use.⁶ The SWRCB held:

4 Due diligence is not established simply because beneficial use may increase as
5 demands increase. The requirement that an appropriation of water be completed
6 within a reasonable time with the exercise of due diligence is a long-standing
7 principle of California water law intended to protect the public interest by
8 preventing the “Cold Storage” of water rights.

- 9 • Similarly, in 2008, SWRCB issued Order WR 2008–0045 (“Auburn Order”) revoking
10 the water rights permits of the United States Bureau of Reclamation (“Reclamation”)
11 for the Auburn Dam Project. SWRCB determined that Reclamation had failed to put
12 water under its permits to full beneficial use and failed to demonstrate water would be
13 put to beneficial use in the future such that the further extension of Reclamation’s
14 permits would constitute the unlawful Cold Storage of water rights.
- 15 • In 2022, SWRCB issued Order WR 2022-0165, canceling San Joaquin County’s
16 Water Rights Application 29657 to divert water from the American River for
17 municipal, industrial, and agricultural purposes within the County. The SWRCB
18 determined that the County failed to diligently complete planning and construction for
19 a proposed diversion project. Notably, the application at issue that SWRCB
20 determined had not been pursued with adequate due diligence was filed by the County
21 in 1990 – eighteen years after DWR’s 1972 permits were issued.

22 58. As set forth in this Complaint, the SWRCB inequitably refuses to apply the same
23 due diligence requirements to DWR’s applications/permits as it applies to other water rights
24 applicants; moreover, SWRCB has allowed DWR to reserve water allocated under the permits to
25 be held unlawfully in Cold Storage for future projects. Notably, DWR’s most recent Delta

26 ⁶ Notably, in the *Irish Beach* decision, the permittee, Irish Beach Water District, served
27 almost 500 approved lots with an existing water service infrastructure and about 167 currently
28 operating connections. The area within the District was one of the only places left along that
section of the Mendocino Coast where development could occur. There was little doubt that
water under the permit at issue would likely be put to a beneficial use at some point of time in
the near future. Nonetheless, the SWRCB denied an extension of the permit in that matter,
finding that an extension of time to put the water to a beneficial use would result in “Cold
Storage.”

1 Conveyance Project is not scheduled to be completed for at least another 20 years, thus
2 potentially allowing water under the original 1972 permits to be held in Cold Storage for 80
3 years or more. Further, as set forth above, DWR’s Delta Conveyance Project is not the same
4 project described in the permits at issue originally approved by the SWRCB in 1972, raising the
5 issue of whether the SWRCB could deem the project as legally sufficient due diligence.

6 59. Based on the foregoing, Plaintiffs contend that the SWRCB has unlawfully
7 allowed DWR to place critical water rights into “Cold Storage.” As alleged herein, since at least
8 1972, DWR has failed to diligently put the water allocated under its permits to full beneficial
9 use by DWR’s own admission.⁷ The SWRCB has chosen not to act on DWR’s Petition to
10 Extend since 2009, apparently based on representations that DWR will construct future
11 “projects” that would allow it to exercise full beneficial use of water under its permits. Notably,
12 DWR’s future proposed projects are not the projects anticipated under its original permits, and
13 DWR has already abandoned two of its proposed future projects (e.g., BDCP and WaterFix)
14 since 2009. By accepting and noticing DWR’s February 22, 2024, Change Petition for yet
15 another proposed future project without resolving the 2009 Petition to Extend, the SWRCB
16 unlawfully perpetuates the unlawful Cold Storage of DWR’s permits.

17 60. SWRCB’s actions allowing DWR to place these water rights into Cold Storage
18 irreparably harms the public interest, ignores the SWRCB’s Public Trust duties, and injures
19 other water users throughout the California Bay Delta. Significant developments in the five
20 decades preceding DWR’s 1972 application date include: population growth and expansion of
21 farming acreage in the Sacramento Valley, changes in regulatory requirements and the
22 SWRCB’s failure to enforce water quality standards, damage to endangered species, unmet
23 senior needs within the watershed, climate change, failure to develop 5-million-acre feet of
24 water from the North Coast by the year 2000, and depletion of groundwater basins. These and
25 other actions have dramatically reduced the availability of unappropriated water to fulfil the
26

27 ⁷ According to Water Rights Decision 1275:

28 8. Construction work shall be completed on or before December 1, 1972.

9. Complete application of the water to the proposed use shall be made on or before
December 1, 1990.

1 rights DWR now seeks to exercise. To allow the diversion and use of such Cold Storage
2 claimed water rights to serve and further residential and permanent crop development in arid and
3 desert water export areas is both unreasonable under Article 10 Section 2 of the California
4 Constitution and damaging to the Public Trust.

5 **JURISDICTION AND VENUE**

6 61. This Court has jurisdiction over the matters alleged in this Complaint pursuant to
7 Code of Civil Procedure sections 1060 and 1085.

8 62. Venue for this action properly lies in the Superior Court for the County of Fresno
9 because the Attorney General, who will be representing the SWRCB in this action, has an office
10 in Fresno County. (Code Civ. Proc., § 401, subd. (1).) In addition, facilities proposed to convey
11 water from the Bay-Delta include the California Aqueduct, which traverses western Fresno
12 County. Flows from the South Fork of the San Joaquin River originate in Fresno County near
13 Martha Lake. The Bay-Delta Plan also imposes certain outflow objectives for the San Joaquin
14 River in the Delta in order to maintain beneficial uses and biological goals for salmon.
15 Although the water to be diverted under the permits at issue in this Complaint does not include
16 San Joaquin River water, the Cold Storage of water under those permits has the potential to
17 impact the ability of water from the San Joaquin River to meet flow objectives in the Delta and
18 restoration flows along the section of the San Joaquin River in Merced and Fresno Counties.

19 **RIPENESS AND STANDING**

20 63. Plaintiffs have standing to assert the complaint for declaratory relief regarding
21 DWR's 2009 Petition to Extend, the status of their Protests, and SWRCB's actions to allow
22 DWR to hold its rights in Cold Storage for decades while cancelling other water rights
23 applications for failing to diligently put the permitted water to use. Plaintiffs would be directly
24 impacted by the outcome of DWR's 2009 Petition to Extend. Plaintiffs timely filed Protests
25 pursuant to published notice from the SWRCB in 2010. There is also a strong public interest in
26 preventing unexercised water rights from being impermissibly held in Cold Storage; such a
27 practice severely injures other water rights holders as well as the environment and precludes the
28 effective management of the State's water resources.

1 protests, and Plaintiffs have a clear, present and beneficial right to SWRCB's performance of
2 that duty.

3 WHEREFORE, Plaintiffs pray for the relief requested in the Prayer below.

4 **PRAYER**

5 WHEREFORE, Plaintiffs pray for judgment and relief as hereinafter set forth:

6 1. For an Order of this Court finding that the SWRCB's failure to act on DWR's
7 2009 Petition to Extend and protests of that petition constitutes the unlawful Cold Storage of the
8 water rights under DWR's permits.

9 2. For an Order of this Court finding that the SWRCB must resolve DWR's 2009
10 Petition to Extend and Plaintiffs' Protests before undertaking any proceedings on the water
11 rights change petition noticed on February 29, 2024, for the Delta Conveyance Project.

12 3. For an Order that a water rights proceeding on the Delta Conveyance Project
13 cannot commence unless the SWRCB conducts a proceeding and reaches a decision on DWR's
14 2009 Petition to Extend and Plaintiffs' 2010 Protests.

15 4. For a peremptory writ of mandate compelling SWRCB to hold proceedings on
16 DWR's 2009 Petition to Extend and Plaintiffs' Protests before undertaking any further
17 proceedings on the water rights change petition noticed on February 29, 2024, for the Delta
18 Conveyance Project.

19 5. An order awarding Plaintiffs' attorneys' fees under Code of Civil Procedure
20 section 1021.5, Government Code section 800, and other applicable authority;

21 6. Costs of suit; and

22 7. Such other and further relief as the court deems just and proper.

23 Respectfully submitted,

24 Dated: April 16, 2024


SOLURI MESERVE,
A LAW CORPORATION

25
26
27 By: 

Osha Meserve
Attorney for Plaintiff
Central Delta Water Agency


1 Dated: April 16, 2024

NOMELLINI, GRILLI & McDANIEL
LAW OFFICE

2
3
4 By: 
Dante John Nomellini
Attorney for Plaintiff
Central Delta Water Agency


5
6
7 Dated: April 16, 2024

MICHAEL B. JACKSON
ATTORNEY AT LAW

8
9
10 By: 
Michael B. Jackson
Attorney for Plaintiffs
California Sportfishing Protection Alliance and
AquAlliance

11
12
13 Dated: April 16, 2024

ROGER B. MOORE
LAW OFFICE OF ROGER B. MOORE

14
15
16
17 By: 
Roger B. Moore
California Water Impact Network

1 **VERIFICATION**

2 I, Osha R. Meserve, am counsel of record for Plaintiff Central Delta Water Agency
3 (“CDWA”). I sign for Plaintiffs absent from the county and/or because facts contained in the
4 Complaint for Declaratory Relief and Petition for Writ of Traditional Mandamus
5 (“Complaint/Petition”) are within the knowledge of counsel. I have read the attached
6 Complaint/Petition and am familiar with its contents. All of the facts alleged in the above
7 Complaint/Petition, not otherwise supported by exhibits or other documents, are true of my own
8 knowledge, except as to matters stated on information and belief, and as to those matters, I
9 believe them to be true.

10 I declare under penalty of perjury under the laws of the State of California that the
11 foregoing is true and correct. Executed on April 16, 2024, at Sacramento, California.

12
13 

14 _____
Osha R. Meserve

EXHIBIT 1

KDM

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

2000 DEC 31 AM 10:02
DIVISION OF WATER RIGHTS
SACRAMENTO, CALIFORNIA

PETITION FOR EXTENSION OF TIME

WATER USERS:

Application 5630, 14443, 14445A, 17512 Permit 16478, 16479, 16481, 16482

Water Code section 1396 requires an applicant to exercise due diligence in developing a water supply for beneficial use. The State Water Resources Control Board (SWRCB), in considering requests for extension of time, will review the facts presented to determine whether there is good cause for granting an extension of time to complete the project. Where diligence in completing the project is not fully substantiated, the SWRCB may set the matter for hearing to determine the facts upon which to base formal action relating to the permit. Formal action may involve:

1. Revoking the permit for failure to proceed with due diligence in completing the project.
2. Issuing a license for the amount of water heretofore placed to beneficial use under the terms of the permit.
3. Granting a reasonable extension of time to complete construction work and/or full beneficial use of water.

The time previously allowed in your permit within which to complete construction work and/or use of water has either expired or will expire shortly.

Please check below the action you wish taken on this permit.

- The project has been abandoned and I request revocation of the permit.

Signature
- Full use of water has been made, both as to amount and season, and I request license be issued.

Signature
- The project is not yet complete. I request the SWRCB's consideration of the following petition for an extension of time.

**PETITION FOR EXTENSION OF TIME
If START of construction has been delayed**

Complete items 1, 2, and 3.

1. What has been done since permit was issued toward commencing construction?
N/A
2. Estimate date construction work will begin. N/A
3. Reasons why construction work was not begun within the time allowed by the permit. N/A

(Part of check)
581300
- total \$6000

Receipt \$4000
+ DFG \$850
12/31/0

PETITION FOR EXTENSION OF TIME

If construction work is proceeding

If construction work and/or use of water is proceeding but is not complete, an extension of time may be petitioned by completing items 4 through 16. Statements must be restricted to construction or use of water only under this permit.

- 4. A 5 (See Supplement) - year extension of time is requested to complete construction work and/or beneficial use of water. (Indicate a period of time less than or equal to 10 years. Must be consistent with the time frame allowed in (California Code of Regulations sections 840 through 844)
- 5. How much water has been used? See Supplement acre-feet/year _____ cfs
- 6. How many acres have been irrigated? See Supplement
- 7. How many houses or people have been served water? See Supplement
- 8. Extent of past use of water for any other purpose. See Supplement
- 9. What construction work has been completed during the last extension? See Supplement
- 10. Approximate amount spent on project during last extension period. See Supplement
- 11. Estimate date construction work will be completed. See Supplement
- 12. Estimated year in which water will be fully used. See Supplement
- 13. Reasons why construction and/or use of water were not completed within time previously allowed. See Supplement

If the use of water is for municipal (including industrial) and irrigation supplies and is provided or regulated by public agencies and use of the water has commenced, but additional time is needed to reach full use contemplated, the following information must be provided.

- 14. What water conservation measures are in effect or feasible within the place of use? See Supplement
- 15. How much water is being conserved or is it feasible to conserve using these conservation measures? See Supplement acre-feet per annum.
- 16. How much water per capita is used during the maximum 30-day period? see Supplement.

I (we) declare under penalty of perjury that the above is true and correct to the best of my (our) knowledge and belief.

Dated: December 31 20-09, at Sacramento, California


Signature(s)

(916) 653-8826
Telephone No.

Erick D. Soderlund

1416 Ninth Street Sacramento, CA 95818

PLEASE PRINT YOUR NAME AND ADDRESS

NOTE: A \$1,000 filing fee, for each Application listed, made payable to the State Water Resources Control Board must accompany a petition for an extension of time. An **\$850 fee** made payable to the Department of Fish and Game must accompany all but the first petition for an extension of time.

Supplement

Petitions for Extension of Time

Applications 5629 (Permit 16477), 5630 (Permit 16478), 14443 (Permit 16479), 14444 (Permit 16480), 14445A (Permit 16481), and 17512 (Permit 16482)

The State Water Resources Control Board (SWRCB) issued water rights permits 16478, 16479, 16481, and 16482 (Applications 5630, 14443, 14445A, and 17512) to the Department of Water Resources (DWR) on September 26, 1972, authorizing the appropriation of water from the Feather River and Sacramento/San Joaquin River Delta channels for the purpose of operating the State Water Project (SWP). The permits required the completion of construction by December 1, 1980, and complete application of the water to the proposed use by December 1, 1990. DWR petitioned for and received an extension of time from the SWRCB. Term 6 of Amended Permits 16478, 16479, 16481, and 16482 requires that construction work be completed by December 31, 2000. Term 7 requires that complete application of the water to the proposed use shall be completed by December 31, 2009

DWR's Amended Permits 16478, 16479, 16481, and 16482 allow DWR to divert and store water from the aforementioned sources, and put that water to beneficial use within the service area of the SWP as shown on maps nos. 1878-1, 1878-2 and 1878-3 on file with SWRCB. The SWP delivers water to 29 long-term water supply contractors serving approximately 25 million people and providing irrigation to approximately 750,000 acres of farmland as well as providing water for environmental benefits. In addition, the SWP provides water to numerous agencies under the provisions of water rights settlement agreements in satisfaction of prior water rights as well as providing supplemental supplies.

The SWP is a large, complex water supply system consisting of 29 dams, 30 pumping and generating plants and approximately 675 miles of aqueducts. The initial conservation and transportation facilities were essentially completed in 1973, however other facilities have been constructed, are under construction, or are planned to accommodate existing and anticipated demand for SWP water and to minimize impacts of SWP operations. Water supply planning, construction, financing, management and operation activities of the SWP are published annually in the Bulletin 132 series reports. A copy of Bulletin 132-06 is attached.

Under the above Permits, DWR can divert and redivert up to 10,350 cubic feet per second (cfs) at the Banks Pumping Plant for direct use and storage from January 1 to December 31 of each year. DWR can also divert up to 3,880,000 acre-feet per year (AFY) of water to storage in Lake Oroville between September 1 and July 31 and up to an additional 1,186,100 AFY to storage in San Luis Reservoir and the other southern California reservoirs January 1 through December 31 for multiple uses in the SWP service area. DWR's ability to divert and store water at the maximum rates authorized in the permits is dependent on annual hydrologic conditions, in-basin demands, instream requirements, water quality objectives, and operational and regulatory

restrictions.

While DWR has at times diverted the maximum rate allowed under the Feather River/Delta Permits, due to various factors DWR has not directly diverted, rediverted, or diverted to storage the maximum amounts allowed annually under the Feather River/Delta Permits. Some factors that have limited DWR's diversions and resulted in the use and storage being below the maximum entitlement allowed under the Feather River/Delta Permits, include 1) annual hydrologic conditions in the Feather River watershed and the Sacramento-San Joaquin Delta, 2) regulatory restrictions on SWP Delta operations, 3) actions necessary for compliance with the Federal and State Endangered Species Acts (ESAs), 4) municipal development within the SWP service area, and 5) the availability of water from other agencies' supplemental sources. Continuation of DWR's ability to make full use of the Feather River/Delta Permits, however, is critical for DWR to maintain operational flexibility in order to meet DWR's contractual obligations, help meet the State's future projected water demand and address vulnerabilities in the State's water supply associated with several factors, including emergencies, drought and the effects of climate change.

In addition, recent legislation established a Delta Stewardship Council to adopt and oversee implementation of a Delta Plan that may include the Bay-Delta Conservation Plan (BDCP) (See Water Code section 85000 et seq.; Senate Bill 7X1 (Simitian/Steinberg) (Sacramento-San Joaquin Delta Reform Act of 2009)). The Delta Plan is intended to further restoration of the Delta ecosystem and a reliable water supply. The implementation of the Delta Plan is likely to influence future construction of SWP facilities and SWP water supply delivery.

In light of the above, DWR is filing petitions with the SWRCB to extend and continue the terms of the Feather River/Delta Permits for a five-year period to the year 2015. It is not possible at this time to accurately predict what the ultimate diversions under the Feather River/Delta Permits will be or a date at which the full permitted quantity will be put to beneficial use. The factors listed above, including the outcome of the BDCP process, the recent legislation, and current litigation, create tremendous uncertainty in predicting future operations and diversions. It is clear, however, that demand exists for the additional SWP water supply and is expected to grow as demand continues to increase in the SWP contractors' service areas.

As such, DWR believes it is in the public interest to extend the Feather River/Delta Permits for five years. At the end of this period, DWR should be in a much better position to explain the time, facilities, and operations that will be necessary to maximize the beneficial use of water. Depending on circumstances in the future, at the conclusion of this five-year period, DWR may need to petition for further extension of said permits.

In the interim, DWR will continue to divert and redivert water to direct use and storage in accordance with the existing terms and conditions of its permits as well as any additional regulatory restrictions imposed on the Project. The extension, therefore, will not change DWR's operating requirements. It is also important to note that approval of

a time extension will not limit the SWRCB's authority to regulate DWR's authorized diversions or alter its responsibility for meeting in-basin demands and instream flow requirements in the Feather River and, along with the Bureau of Reclamation, for maintaining water quality requirements in the Delta. Granting a time extension will not impact other downstream users of water.

Additional responses to specific questions on the Petitions for Extension of Time are provided below.

5. Maximum annual diversion to storage from the Feather River at Lake Oroville is 2,488,607 AF during the 1977/78 water year. Annual deliveries and SWP operations are provided in DWR's Annual Progress Reports filed with the Division of Water Rights and in Bulletin 132 series which are provided to the Division of Water Rights when it is published. It is also available at <http://www.water.ca.gov/swpao/bulletin.cfm>.

The SWP is a complex system and, as such, it is difficult to separate water diverted under the provisions of specific individual permits. The permits operate together consistent with the provisions governing overall SWP operations. The water is commingled to meet overall project purposes.

6. The SWP provides water for the irrigation of approximately 750,000 acres.

7. Approximately 25 million Californians rely on SWP water as a part of their water supply.

8. The water developed by DWR is also used for municipal and industrial supply, salinity control, recreation, and fish and wildlife enhancement.

9. The initial conservation and transportation facilities were essentially completed in 1973, however other facilities have been constructed, are under construction or are planned to accommodate existing and anticipated demand for SWP water and to minimize impacts of SWP operations. Since the last extension approved on July 2, 1991, DWR completed construction of the Coastal Branch and Phase 1 of the East Branch Extension of the California Aqueduct. Phase 2 of the East Branch Extension is currently in the design phase. Additional facilities may be required to fully develop the SWP water supply or aid in minimizing impacts of SWP operations. The Peripheral Canal, proposed by the Legislature in 1980, was never constructed; however the potential benefits of a dual conveyance, both through and around the Delta, is currently being evaluated as part of the BDCP process. DWR continues to plan, design, and construct water conveyance and power-producing facilities for the SWP as demand and operational considerations dictate.

10. Approximately \$1.4 billion dollars was spent on construction costs between 1991 and the end of 2005. Water supply planning, construction, financing, management and operation activities of the SWP are published annually in the Bulletin 132 series reports.

11. Current estimates project completion of Phase 2 of the East Branch Extension in 2014. Completion of other potential elements of the SWP is too speculative to project prior to completion of the BDCP process. However, recent legislation established a Delta Stewardship Council to adopt and oversee implementation of a Delta Plan that may include the BDCP (See Water Code section 85000 et seq.; Senate Bill 7X1(Simitian/Steinberg) (Sacramento-San Joaquin Delta Reform Act of 2009)). The Delta Plan is intended to further restoration of the Delta ecosystem and a reliable water supply. The implementation of the Delta Plan is likely to influence future construction of SWP facilities and SWP water supply delivery.

12. As noted above, given the current regulatory restrictions and issues relating to the Sacramento/San Joaquin Delta, it is difficult to estimate when conditions will be such that DWR can maximize the amount of water put to beneficial use under DWR's water rights permits. Water supply demands within the state continue to increase and the SWP water remains a critical component of the State's water supply and current trends project significant growth in the SWP service area. In addition, SWP water is crucially important in addressing vulnerabilities in the State's water supply associated with several factors, including emergencies, drought and the effects of climate change. Therefore, DWR believes it is in the public interest for the State Water Board to grant the requested extension of time until the year 2015 to allow DWR time to satisfy increasing future beneficial water uses that are authorized under the DWR's water rights permits.

13. As stated above, there are many factors that have contributed to the use and storage being below the maximum authorized under DWR's permits including annual hydrologic conditions, SWP operations for water supply purposes, regulatory restrictions on SWP operations, and actions necessary for compliance with the Federal and State Endangered Species Acts.

14. Since 1979, DWR has provided information and assistance to water users. DWR's Office of Water Use Efficiency provides expertise to local agencies and individuals regarding agricultural and urban water and energy conservation, reclamation and reuse of water, land and water use, and drainage management. The office also manages the California Irrigation Management Information System (CIMIS), assists in establishing mobile laboratories that conduct irrigation system evaluations, carries out data analysis, demonstration projects, and research to achieve energy and water use efficiency, and provides loans and grants to make more efficient use of water and energy resources.

In addition to DWR's efforts, the agencies receiving SWP water implement local water conservation programs. The area is expected to experience significant growth in the future. Drought year water supply reliability continues to be a major challenge to the entire State. Water conservation programs are a key element in the water management strategies for all the agencies within the SWP service area. The majority of the cities receiving SWP supplies are also members of California Urban Water Conservation Council (CUWCC) and are signatory to a Memorandum of Understanding to implement

best management practices for urban agencies at the wholesale level. Some of the smaller communities that are not members of CUWCC have implemented their own aggressive water conservation programs.

15. The quantity of water conserved or feasible to conserve is developed individually for each specific municipality or entity that receives SWP water.

16. The per capita water use for those receiving water from the SWP varies for each of the SWP contractors. DWR has no jurisdiction over the operations within individual water supply agencies.

California Environmental Protection Agency

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

ENVIRONMENTAL INFORMATION FOR PETITIONS

Petition for Change

Petition for Extension of Time

Before the State Water Resources Control Board (SWRCB) can approve a petition to change your water right permit or a petition for extension of time to complete use, the SWRCB must consider the information contained in an environmental document prepared in compliance with the California Environmental Quality Act (CEQA). This form is not a CEQA document. If a CEQA document has not yet been prepared, a determination must be made of who is responsible for its preparation. As the petitioner, you are responsible for all costs associated with the environmental evaluation and preparation of the required CEQA documents. Please answer the following questions to the best of your ability and submit any studies that have been conducted regarding the environmental evaluation of your project. If you need more space to completely answer the questions, please number and attach additional sheets.

1. DESCRIPTION OF PROPOSED CHANGES OR WORK REMAINING TO BE COMPLETED

For a petition to change, provide a description of the proposed changes to your project including, but not limited to, type of construction activity, structures existing or to be built, area to be graded or excavated, increase in water diversion and use (up to the amount authorized by the permit), changes in land use, and project operational changes, including changes in how the water will be used. For a petition for extension of time, provide a description of what work has been completed and what remains to be done. Include in your description any of the above elements that will occur during the requested extension period.

See Attachment No. 1

ENVIRONMENTAL INFORMATION FOR PETITIONS

2. COUNTY PERMITS N/A

a. Contact your county planning or public works department and provide the following information:

Person contacted: _____ Date of contact: _____
Department: _____ Telephone: (____) _____
County Zoning Designation: _____

Are any county permits required for your project? YES NO If YES, check appropriate box below:

- Grading permit Use permit Watercourse Obstruction permit Change of zoning
 General plan change Other (explain):

b. Have you obtained any of the required permits described above? YES NO

If YES, provide a complete copy of each permit obtained.

See Attachment No.

3. STATE/FEDERAL PERMITS AND REQUIREMENTS N/A

a. Check any additional state or federal permits required for your project:

- Federal Energy Regulatory Commission U.S. Forest Service Bureau of Land Management
 Soil Conservation Service Dept. of Water Resources (Div. of Safety of Dams) Reclamation Board
 Coastal Commission State Lands Commission Other (specify) _____

b. For each agency from which a permit is required, provide the following information:

AGENCY	PERMIT TYPE	PERSON(S) CONTACTED	CONTACT DATE	TELEPHONE NO.

See Attachment No.

c. Does your proposed project involve any construction or grading-related activity that has significantly altered or would significantly alter the bed or bank of any stream or lake? YES NO

If YES, explain: _____

See Attachment No.

ENVIRONMENTAL INFORMATION FOR PETITIONS

- d. Have you contacted the California Department of Fish and Game concerning your project? YES NO
If YES, name and telephone number of contact: _____

4. ENVIRONMENTAL DOCUMENTS

- a. Has any California public agency prepared an environmental document for your project? YES NO
If YES, submit a copy of the latest environmental document(s) prepared, including a copy of the notice of determination adopted by the California public agency. Public agency: _____

- b. If NO, check the appropriate box and explain below, if necessary:

The petitioner is a California public agency and will be preparing the environmental document.*

I expect that the SWRCB will be preparing the environmental document.**

I expect that a California public agency other than the State Water Resources Control Board will be preparing the environmental document.* Public agency: _____

See Attachment No. 1

* Note: When completed, submit a copy of the final environmental document (including notice of determination) or notice of exemption to the SWRCB, Division of Water Rights. Processing of your petition cannot proceed until these documents are submitted.

** Note: CEQA requires that the SWRCB, as Lead Agency, prepare the environmental document. The information contained in the environmental document must be developed by the petitioner and at the petitioner's expense under the direction of the SWRCB, Division of Water Rights.

5. WASTE/WASTEWATER N/A

- a. Will your project, during construction or operation, (1) generate waste or wastewater containing such things as sewage, industrial chemicals, metals, or agricultural chemicals, or (2) cause erosion, turbidity or sedimentation?
 YES NO

If YES, or you are unsure of your answer, explain below and contact your local Regional Water Quality Control Board for the following information (See instruction booklet for address and telephone no.):

 See Attachment No.

- b. Will a waste discharge permit be required for your project? YES NO

Person contacted: _____ Date of contact: _____

c. What method of treatment and disposal will be used? _____

 See Attachment No.

6. ARCHEOLOGY N/A

- a. Have any archeological reports been prepared on this project? YES NO

b. Will you be preparing an archeological report to satisfy another public agency? YES NO

c. Do you know of any archeological or historic sites located within the general project area? YES NO

ENVIRONMENTAL INFORMATION FOR PETITIONS

If YES, explain: _____

See Attachment No. _

7. ENVIRONMENTAL SETTING N/A

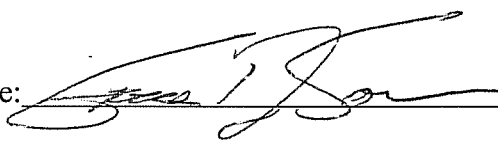
Attach **three complete sets of color photographs**, clearly dated and labeled, showing the vegetation that exists at the below-listed three locations. For time extension petitions, the photographs should document only those areas of the project that will be impacted during the requested extension period.

- Along the stream channel immediately downstream from the proposed point(s) of diversion.
- Along the stream channel immediately upstream from the proposed point(s) of diversion.
- At the place(s) where the water is to be used.

8. CERTIFICATION

I hereby certify that the statements I have furnished above and in the attachments are complete to the best of my ability and that the facts, statements, and information presented are true and correct to the best of my knowledge.

Date: December 31, 2009

Signature:  _____

Attachment 1

1. Description of Proposed Changes

The Department of Water Resources (DWR) seeks an extension of time to the year 2015 for each of the permits listed below. The year 2015 represents a 5-year extension of time for all permits listed. Permits 16477 and 16480 authorize the power operations at the existing Oroville/Thermalito Complex (non-consumptive uses). The remaining permits authorize the diversion and rediversion of water available in the Feather River and Delta channels by DWR for water supply purposes (consumptive uses).

Application Number	Permit Number
5629	16477
5630	16478
14443	16479
14444	16480
14445A	16481
17512	16482

The project does not involve the construction of any new facilities or expansion of authorized uses beyond those currently authorized under the permits listed above. The sole purpose of the project is to allow DWR additional time to place the water currently authorized under the permits to beneficial uses prior to licensing. All facilities required for the storage, diversion and conveyance of the water that are the subject of this project, from its sources to its points of diversion and rediversion for both the authorized consumptive and non-consumptive uses, have been completed. The extensions of time will not authorize the construction of any facilities. Any new facilities would require separate evaluations including California Environmental Quality Act (CEQA) compliance and permitting by the State Water Resources Control Board (State Water Board) specific to any selected project. The time extension will simply extend the period under the existing permits for placing the water to beneficial use prior to licensing. The time extension does not change the State Water Board's authorities to impose new terms on permits through its water rights and water quality regulatory process, if conditions should warrant such changes. The State Water Project will continue to be operated in compliance with all the existing permit terms and conditions and with any measures necessary to comply with the Federal and State Endangered Species Acts (ESAs).

4. Environmental Documents

DWR is the lead CEQA agency and will prepare the appropriate environmental documentation in compliance with CEQA. DWR will work with the State Water Board to ensure that adequate environmental documentation is completed to support the requested time extensions.

EXHIBIT 2

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

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 5629, 5630, 14443, 14444, etc.

1. I, (We) SDWA, CDWA, Lafayette Ranch Inc., R.C. Farms Inc.
of 4255 Pacific Ave Ste. 2 Stockton, CA 95207, ^{Name of Protestant(s)} (209) 956-0150 have read carefully a copy
of, or a notice relative to, Application ^{Mailing address and zip code of protestant(S)} see above of ^{Telephone Number} Department of Water Resources
see above to appropriate from ^{Name of applicant} Feather River, Delta, etc. (see petition)
at a point ^{Name of source} see petition

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? further limitations on exports additional
(Conditions should be a nature that the applicant can address and either accept or submit mitigating measures.)

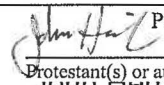
Delta flow

4. A true copy of this protest has been served upon the applicant Department of Water Resources

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

Date: _____

Notes: Attach supplemental sheets as necessary. Protests must be filed within the time specified in the notice of application

 Personally or by mail
Protestant(s) or authorized representative sign here
JOHN HENICK, ESQ. Atty for Protestants
Type or print name and title of representative, if applicable
4255 Pacific Ave. Ste. 2
Street address
Stockton Ca 95207
City and State
(209) 956-0150
Telephone number

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>

PROTEST – APPLICATION

Based on Prior Filed Application or Injury to Prior Rights
(Protests based on Environmental Considerations, Public Interest, Public Trust, and Other Issues should be completed on other side of form)

APPLICATION 5629, 5630, 14443, 14444, etc

1. I, (We) SDWA, CDWA, Lafayette Ranch Inc., R.C. Farms, Inc.
of 4255 Pacific Ave. Ste. 2 Stockton, CA 95207, (209) 0150 have read carefully a copy
of, or a notice relative to, Application see above of Department of Water Resources
to appropriate from Feather River, Delta, etc. (see petition)
at a point see petition
2. I, (We) desire to protest against the approval thereof because to the best of attached information and belief the proposed appropriation will result in injury to US as follows: see attached
Me or us State the injury which will result
3. Protestant claims an interest in the use of water from the source from which applicant proposes to divert which is based upon: see attached
Prior application; appropriative permit or license; notice posted or use begun prior to December 19, 1914; riparian claim; etc.
Please provide application, permit, license, or statement of water diversion and use numbers which cover your use of water, or state "none".
see attached
4. Where is your diversion point located? attach ¼ of _____ ¼ of Section _____, T. _____, R. _____, _____ B&M
Is your point of diversion downstream from applicant point of diversion? attached
Yes, No, or at same point
5. The extent of present and past use of water by protestant or his predecessors in interest from this source is as follows (leave blank if protest based on prior filed application): attached
a. approximate date first use made _____
b. amount used _____
c. time of year when diversion is made _____
d. purpose(s) of use _____
6. Under what conditions may this protest be disregarded and dismissed? further limitations on exports, additional Delta
(Conditions should be of a nature that the applicant can address, such as minimum by-pass flows, measuring devices required, acknowledgement of prior rights, etc.)
HOWS
7. A true copy of this protest has been served upon the applicant Department of Water Resources
Personally or by mail

John Herrick
Protestant(s) or authorized representative sign here
JOHN HERRICK, ESQ.

Type or print name and title of representative, if applicable
4255 Pacific Ave. Ste. 2

Street Address
Stockton Ca 95207

City and State
(209) 956-0150

Telephone Number

Date: _____

Notes: Attach supplemental sheets as necessary.
Protests must be filed within the time specified in the notice of application.

1 **JOHN HERRICK, ESQ., S.B. #139125**

Attorney at Law
2 4255 Pacific Avenue, Suite 2
Stockton, CA 95207
3 Telephone: (209) 956-0150
Fax: (209) 956-0154

4 **DANTE JOHN NOMELLINI - SBN 040992**
5 **DANTE JOHN NOMELLINI, JR. - SBN 186072**

NOMELLINI, GRILLI & McDANIEL
6 PROFESSIONAL LAW CORPORATIONS
235 East Weber Avenue
7 Post Office Box 1461
Stockton, California 95201
8 Telephone: (209) 465-5883
Facsimile: (209) 465-3956

9 **DEAN RUIZ - SBN #213515**

Harris, Perisho & Ruiz
10 3439 Brookside Road, Suite 210
11 Stockton, CA 95210
Telephone: (209) 957-4254
12 Facsimile: (209) 957-5338

13 Attorney for Protestants
SOUTH DELTA WATER AGENCY,
14 CENTRAL DELTA WATER AGENCY
LAFAYETTE RANCH INC. and
15 R. C. FARMS INC.

16
17 STATE OF CALIFORNIA

18 STATE WATER RESOURCES CONTROL BOARD

19 In the matter of Notice of Petition for Extension) **PROTEST OF PETITION**
20 of Time for the State Water Project of DWR)
Permits 16477, 16478, 16479, 16480, 16481,)
21 16482, Applications 5629, 5630, 14443, 14444,)
14445A, 17512)
22 _____)

23 The CENTRAL DELTA WATER AGENCY, a body politic and corporate of the State
24 of California, SOUTH DELTA WATER AGENCY, a body politic and corporate of the State of
25 California, LAFAYETTE RANCH INC., a California corporation, and R.C. FARMS INC., a
26 California corporation, hereinafter jointly referred to as (“Protestants”) herein protest the above-
27 named Petition for Extension of Time for the State Water Project of California Department of
28 Water Resources and respectfully allege and state as follows:

1 **BACKGROUND**

2 SOUTH DELTA WATER AGENCY (hereinafter referred to as “SDWA”) is a body
3 politic and corporate of the State of California created by Chapter 1089 of the Statutes of 1973
4 of the State of California (South Delta Water Agency Act). The boundaries of SDWA are
5 described in Section 9.1 of the South Delta Water Agency Act (Stats. 1973, c. 1089). The area
6 included within SDWA is located within the Sacramento-San Joaquin Delta as defined in
7 California Water Code Section 12220 and is generally referred to as the southern Delta. The
8 purposes and powers of the SDWA are set forth in Article 4 of the South Delta Water Agency
9 Act. The principal purposes of SDWA are to protect the water supply of the lands within its
10 boundaries against intrusion of ocean salinity and to assure those lands a dependable in-channel
11 supply of water of suitable quality sufficient to meet present and future needs.

12 Regarding the areas within its boundaries, SDWA is a partial successor in interest of the
13 Delta Water Agency, a body politic and corporate of the State of California.

14 The area within the boundaries of SDWA is approximately 148,000 acres in size, is
15 primarily devoted to agriculture and is dependent on the in-channel water supply in the southern
16 Delta for irrigation water and other beneficial uses. The in-channel water supply in the southern
17 Delta is principally dependent upon the inflow of the San Joaquin and Sacramento River
18 systems to the Delta for its source of water.

19 Protestant SDWA’s boundaries encompass some municipal use, but mostly agricultural
20 diversions. These diversions represent both riparian and appropriative rights. The United
21 States Bureau of Reclamation, California Department of Water Resources, and the State Water
22 Resources Control Board have all previously assumed that all lands within the Delta lowlands
23 are riparian to the channels of the Delta (see Central Valley Project California, Delta Lowlands
24 Service Area Investigations January 1964). The Agency’s authorizing statutes in combination
25 with Delta Protection Act (Water Code § 12200 et seq.) require that sufficient water of
26 sufficient quality be maintained in the Delta channels to support current and future beneficial
27 uses.

28 CENTRAL DELTA WATER AGENCY is a political subdivision of the State of

1 California created by the California Legislature under the Central Delta Water Agency act,
2 chapter 1133 of the statutes of 1973, by the provisions of which the CDWA came into existence
3 in January of 1974. The CENTRAL DELTA WATER AGENCY encompasses approximately
4 120,000 acres within the western portion of San Joaquin County. All of such area is within the
5 Sacramento-San Joaquin Delta as defined in California Water Code § 12220. The lands within
6 the Agency are primarily devoted to agriculture; however, there are a number of significant
7 recreational developments and significant wildlife habitat areas. The lands are dependent upon
8 the in-channel water supply for irrigation and other beneficial uses. The in-channel water
9 supply is dependent upon the flow and quality of both the Sacramento and San Joaquin River
10 systems. All of said lands are riparian to the channels within the CDWA and/or to the
11 underground flow of water of said channels. The water rights pertaining to said lands are
12 riparian; however, in some instances the water rights are also covered by permits and licenses
13 for appropriation. There may be some instances of pre-1914 filings. The water rights of said
14 lands in every case known to Complainants are considered “prior vested” water rights in
15 relationship to the USBR and DWR water rights. The CDWA is empowered to assist
16 landowners to protect and assure a dependable supply of water of suitable quality sufficient to
17 meet present and future needs.

18 LAFAYETTE RANCH INC. is a California corporation and the owner of certain land
19 located on Union Island in the unincorporated areas of San Joaquin County. Said acreage is
20 within the boundaries of the SDWA and a portion thereof abuts and diverts water from Middle
21 River, downstream of the point where it separates from Old River. Lafayette Ranch holds an
22 appropriative right and its lands are also riparian to Middle River.

23 R.C. FARMS INC. is a California corporation and the owner and operator of irrigated
24 farmland on both Lower Roberts Island and Woodward Island in the Sacramento/San Joaquin
25 Delta. Its lands on Lower Roberts Island are riparian to and abut the San Joaquin River
26 between Stockton and Turner Cut. Its lands on Woodward Island are riparian to and abut
27 Middle River and Woodward Canal.

28 The Protestants have read the Notice of the Petition for Extension of Time for the State

1 Water Project of the California Department of Water Resources and may be contacted at the
2 address listed on Protest form.

3 **BENEFICIAL USES IN THE DELTA AREA**

4 From time immemorial, the flows of both the San Joaquin River System and the
5 Sacramento River System have varied greatly from year to year and from season to season
6 within each year. In the late summer and early fall, the flow is usually low and it rises in the
7 winter, spring, and early summer as a result of rains and run-off from the melting snow.

8 All of the lands within the boundaries of the South Delta Water Agency and Central
9 Delta Water Agency are riparian to the channels of the Sacramento-San Joaquin Delta and the
10 Sacramento and San Joaquin Rivers. The individual Protestant and the owners of the land
11 contained in and represented by CDWA and SDWA claim the right to the waters flowing in the
12 rivers, channels, canals, and sloughs in the Delta by virtue of riparian rights, prescriptive rights,
13 pre-1914 rights, overlying, statutory, and appropriator's rights based on applications made and
14 permits granted. These landowners and the individual Protestant also claim vested rights in the
15 underground water supply where it is available and which is fed by the rivers, channels, canals
16 and sloughs in the Delta Area. If the surface water quality is degraded, the ground water is also
17 gradually degraded.

18 A change in the flows in the rivers, channels, canals and sloughs in or tributary to the
19 Delta Area will have a material effect on the farming operations conducted on the lands
20 irrigated from these sources. If the flow is too low, the lands are without adequate source of
21 irrigation from the standpoint of quantity of water, quality of water, and adequate draft for
22 diversion pumps. At times of low flows, the source of irrigation water may become unfit
23 because of (1) the drainage water from lands lying upstream and (2) the incursion of salt water
24 from San Francisco Bay. At such times, the poor quality causes reduction in crop yields and
25 values and increased leaching costs. Further, when the flow is low, the cost of operating
26 irrigation pumps is increased.

27 **CURRENT STATUS OF UPSTREAM WATERSHEDS**

28 The CVP and SWP coordinate their operations, and are jointly responsible for numerous

1 water quality objectives and have similar responsibilities under state and federal statutes.

2 1. The operation of the Central Valley Project (“CVP”) severs the hydraulic
3 connection between the upper San Joaquin River and the lower San Joaquin River and
4 Sacramento-San Joaquin Delta (“Delta”) for much of the year. The Friant Unit stores and
5 diverts water from the upper San Joaquin River for delivery to places such as Kern County
6 which is outside the watershed of the San Joaquin River.

7 These diversions and deliveries reduce the average annual flow into the Delta by
8 approximately 544-943 TAF, with reductions in April-September of 347-526 TAF. This
9 decrease in flow deprives downstream riparian and senior appropriators of water at times when
10 there is inadequate supply, quality, and level for their beneficial needs.

11 In addition, the Friant Unit makes no downstream releases towards meeting Water
12 Quality Objectives for Agricultural Beneficial Uses on the San Joaquin River or in the Delta as
13 set forth in the 1995 Water Quality Control Plan and implemented through D-1641. This results
14 in the burden of meeting such Objectives being shifted to New Melones Dam/Reservoir which
15 is incapable of meeting those Objectives on a regular and sustained basis.

16 The operation of the CVP causes other adverse effects in the South and Central Delta.
17 The operation of the CVP export pumps in the Delta substantially decreases the height of the
18 water levels, especially the low tide level to the point where local syphons and pumps are
19 sometimes incapable of operating. Although other factors affect channel morphology, only the
20 export pumps decrease the height of the water.

21 The operation of the CVP and State Water Project (“SWP”) export pumps also alter the
22 flow in the channels creating or exacerbating reverse flows and stagnant zones. This results in
23 insufficient flushing of Delta waters and the concentration of all constituents, including
24 municipal effluent and salts from upstream return flows.

25 The CVP by delivering Delta water to its San Joaquin Valley service area results in the
26 importation thereto of upwards of 100,000,000 tons of salt into the San Joaquin Valley. After
27 this exported water is used, much of the salt is delivered to the San Joaquin River in
28 concentrations which exceed downstream Water Quality Objectives. This drainage also

1 includes high levels of other constituents such as selenium and boron.

2 Operation of the CVP, in conjunction with the SWP has been found to be the major
3 cause of the decline in fisheries in the Delta and its tributaries. Recent Biological Opinions by
4 Fish and Wildlife Service and National Marine Fisheries Service have concluded that CVP
5 operations cause jeopardy to endangered and threatened species. The basis of these Opinions
6 includes both the impacts of the export pumps and the manner in which the projects
7 fundamentally alter the hydrodynamics of the estuary.

8 2. Similarly, the SWP and CVP operate dams and reservoirs on the mainstem of the
9 Sacramento River, and various tributaries thereto, including Shasta Dam and Oroville Dam.
10 The operations of the CVP and SWP have altered the flows and timing of flows to the Delta to
11 the detriment of riparian, pre-1914, and other appropriative water right holders, and adversely
12 impact fisheries and other beneficial and public trust uses. The projects have increased the
13 diversion of water from the Sacramento-San Joaquin watersheds, including the Delta such that
14 insufficient outflow exists to protect environmental and fishery needs. The projects are
15 currently involved in the BDCP process which seeks to increase such diversions which can only
16 further impact environmental and fishery needs, as well as prevent and impair the application of
17 area of origin requirements.

18 At the time the SWP was being considered, various analyses were done to estimate the
19 availability of the water supply produced by the two watersheds. Those analyses indicated that
20 in a repetition of the 1928-1934 drought, the system would produce approximately 17 MAF of
21 water in each of those drought years, while the areas of origin would require approximately 25
22 MAF of water in each of those same years. Thus, there was an approximate 8 MAF shortage,
23 leaving no water available for exports. To address this, DWR planned to add an additional 5
24 MAF per year from North Coast Rivers. However, none of that additional supply was ever
25 developed.

26 The SWRCB recently released its report on the flows necessary to protect public trust
27 needs in the Delta pursuant to SB1. That report indicated that while approximately half of Delta
28 flows were being diverted, it was necessary for approximately 75 percent of the flows to pass

1 through the system. Since the system needs additional outflow, decreases in exports would be
2 necessary, as the DWR and USBR permits are junior to most right holders, and junior to all
3 within-watershed users under area of origin statutes. Regardless of whether any balancing of
4 factors would result in the outflow not being the full 75% as indicated in the report, the report
5 can only be read to mean that more outflow is necessary; thus less exports under Petitioner's
6 permits.

7 **BASIS OF PROTEST**

8 The San Joaquin and Sacramento River systems are connected in the San Joaquin-
9 Sacramento River Delta by a myriad of rivers, channels, canals, and sloughs. Some Delta
10 channels are historically fed by a single river system. However, by means of those
11 interconnecting channels, rivers, canals, and sloughs, the water of the San Joaquin River and
12 Sacramento River systems flowing into the Delta Area are co-mingled, mixed and moved
13 through tidal action. The combined flows of these two river systems furnishes the water supply
14 in the Delta Area including the underground water supply.

15 To the extent that upstream uses are changed or water is diverted or taken from either
16 river system, or from any channel, slough or canal in the Delta, or from any of the tributaries of
17 either river system, the water supply flowing in the rivers, channels, canals and sloughs in the
18 Delta Area, and the underground supply in the Delta Area, may be adversely affected as to
19 level, quantity and quality, thereby depriving the members of CDWA, SDWA, the individual
20 Protestants, and the owners of land lying within the Delta Area of valuable property and water
21 rights.

22 Petitioner's proposed extension of time to put water to beneficial use under its permits,
23 unless properly conditioned, would adversely affect and therefore violate riparian and prior
24 appropriative rights of the individual Protestants and the water users and landowners within in
25 the CDWA and SDWA as established by California law, and would further violate the Delta
26 Protection Statutes (Water Code § 12200-12205) and the Statutes protecting the San Joaquin
27 River and its tributaries (Water Code Sections 12230-12232).

28 Current Water Quality Objectives require upstream releases to meet the 1.0/0.7 EC

1 water quality standard at Vernalis and the three interior South Delta locations. Releases by the
2 USBR to meet the Objectives are and have been inadequate. In recent years one or more of the
3 interior southern Delta standards are violated especially in summer months. The Petitioner and
4 USBR have been negligent in seeking methods by which compliance with the standards will be
5 achieved.

6 Petitioner makes no releases to protect prior vested rights in the central or southern
7 Delta or upstream including those of the individual protestants. In addition, Petitioner has
8 delayed/refused to continue settlement negotiations with Protestants regarding the issue of San
9 Joaquin River flows [Issues of flows, quality, channel levels, reverse flows, etc., were raised in
10 the suit SDWA brought in 1982 against USBR & DWR.] and refuses to negotiate area of origin
11 supply contracts. [Although DWR states it is willing to negotiate such a contract, recent efforts
12 have resulted in few meetings and no progress.] Thus, the prior vested rights of SDWA
13 members are not fully protected. In addition, changed operations of the Petitioner under the
14 Petition may at times be made when there is no net downstream flow in the channels of the
15 southern Delta or when there is subsurface but not surface hydraulic continuity between the
16 point of diversion and the Protestants, thus further damaging and violating prior vested rights or
17 Protestants. Reservation of Board jurisdiction over said Petition would not prevent present and
18 immediate damage to prior vested rights by said proposed changes of use.

19 Although a tidal barrier program in the southern Delta can address some of the harm
20 caused by the State and Federal projects, those barriers are not allowed to operate at all times
21 needed. The barrier project is also subject to State and Federal funding.

22 The system is currently over-committed and unable to provide all legal users with the
23 amount of water desired or needed, and granting the Petition will decrease the supply. This will
24 necessarily cause harm to other legal users. Pursuant to the requirements of the Water Code,
25 the Petition cannot be granted if such harm will occur.

26 The continued flows of the San Joaquin River System and the Sacramento River System,
27 and their respective tributaries, uninterrupted and without diminution by the proposed
28 diversions for which the above Petition has been made, is essential to the continued prosperity

1 and welfare of the owners and operations of land in the San Joaquin and Sacramento River
2 Delta Area, and to the individual Protestants.

3 **PROTEST AGAINST PETITION**

4 The Petitioner does not explain how much water it has, can, or may be able to put to
5 beneficial use. Prior to considering the Petition, it must be shown how much water the water
6 sheds' (in which the Petitioner stores, uses, and diverts water) produce under varying
7 hydrological conditions. From that calculation, Petitioner must then determine how much water
8 is available for all uses with that available supply. Next, Petitioner must explain how the
9 available supply is applied under California water rights priorities. This means that in-basin
10 and in-Delta needs must be allocated water to meet all current and future beneficial needs
11 pursuant to the area of origin (Water Code Sections 11460 et. seq.) and Delta Protection Act
12 (Sections 12200 et. seq.). As part of this calculation, public trust/environmental needs must
13 also be calculated to receive a priority supply.

14 Only after making these calculations can the Petitioner determine how much water is
15 available for export, and thus estimate the amount and place of use of the water it seek under its
16 applications.

17 Petitioner is obligated to fully mitigate its adverse impacts to other water users and the
18 environment. In order to do this it must first quantify those impacts, and then propose how it
19 will operate to avoid those impacts and mitigate prior impacts. This is especially true with
20 regard to fisheries. The SWRCB's D-1485 clearly noted those impacts, commenting that full
21 mitigation would likely require a cessation of exports.

22 The USBR also has other obligations as set forth in Federal law. CVPIA (PL 102-575)
23 requires it (in consultation with California agencies) to double "anadromous fish" which is
24 defined to include salmon, steelhead, striped bass, sturgeon, and American shad that ascend the
25 Delta to the Sacramento and San Joaquin Rivers and their tributaries. Until compliance with
26 this law is determined, Petitioner cannot determine how much water it can/will use or where it
27 can be used.

28 PL 106-361 also places additional burdens on the USBR. Under that law, USBR is

1 required to submit a report which describes the firm yield of the CVP (which goes to the issues
2 raised above). It also requires that actions to increase export pumping be done in a manner to
3 avoid redirected impacts, which is specified to protect in-Delta uses and water supplies for area
4 of origin needs (which also goes to the issues raised above). DWR should be under no less an
5 obligation, and be required to calculate the yielded of the SWP

6 PL 106-381 places other obligations on the USBR as part of the authorization for an
7 intertie. Those obligations include a program to meet all existing water quality standards which
8 shall include an investigation of recirculation and water acquisitions, for the purpose of
9 decreasing the use of New Melones water for meeting such standards. Until the methods by
10 which compliance with this Federal law is determined, DWR should not be able to divert and
11 deliver CVP water.

12 As stated above, the Petitioner conducts many of its operations in conjunction with
13 USBR which operates the CVP. Pursuant to D-1641, both the Petitioner and USBR must be in
14 compliance with the applicable Endangered Species Act requirements under federal and/or state
15 law (see D-1641, page 148, paragraph 7.). Currently, DWR has no permit or other
16 authorization for “take” under California Endangered Species Act (see *Watershed Enforcers, et.*
17 *al. v. DWR* (2007) Alameda Superior Court Case No. RG06292124). Therefore, before the
18 Petitioner can proceed, it must determine the effects of its proposed use of water and how to
19 comply with CESA. Until such time, Petitioner cannot specify how much water it can/will use
20 or where it can be used.

21 The Petition recognizes that there must be a CEQA document evaluating the project (the
22 SWP) before the Petition for an extension of time can be granted. However, the Petitioner then
23 provides no such CEQA document, nor does it outline how and who will prepare such a
24 document. The similar USBR petition references the BDCP process and its presumed
25 environmental documents, but this does not satisfy the requirement. First, the BDCP does not
26 include all the area to which the permits relate. Second, the BDCP documents will purportedly
27 examine a number of alternative operations of the CVP and SWP, including a purpose/goal of
28 having a reliable export water supply (specified as approximately 6MAF per year), without any

1 consideration of area of origin, Delta Protection Act, or other limitations on the projects.
2 Hence, the BDCP documents will be examining a preferred operation of the CVP and SWP, not
3 operations which comply with the laws referenced above.

4 Also as stated above, the original estimations of available supply for exports assumed
5 the SWP would add 5MAF of water to the Sacramento system from north coast rivers. None of
6 that supply was developed. Even with that supply, the water sheds (not including export areas)
7 were calculated to be approximately 8MAF per year short of supply during a repetition of the
8 1928-34 drought. Petitioner is obligated to update these predictions in order to show what water
9 is available for it to use and especially to export. Apparently, in many years, exports will be
10 less than the 6MAF "required" under BDCP, and in some years there is no water available for
11 export. Further evidence of this lack of export supply was the Petitioner's February 2009
12 petition to the SWRCB seeking relief from its Delta outflow obligations. Not only did
13 Petitioner state that it could not meet that obligation, but it suggested it might not be able to
14 meet other fishery flow needs later in the year. Notwithstanding any request to be relieved of
15 the obligation for outflow, the DWR (in conjunction with the USBR) proceeded to export 4,000
16 cfs, leaving 7,000 cfs of outflow when the standard was 11,400 cfs. That is to say, the projects
17 unlawfully took approximately 1/3 of the minimum fishery flow. Clearly, in order to approve
18 the Petition, the Petitioner must provide substantially more information setting forth how it will
19 operate to meet current permit terms and conditions, especially in dry and drought times and
20 how it can justify exports when standards are not being met.

21 Petitioner acknowledges that changes in use under its permits are possible or likely.
22 Until such time as proposed changes are specified, sought or approved, the Petitioner remains
23 obligated to specify and evaluate current operations in order for the Petition to proceed or be
24 approved.

25 The Petitioner has not provided other information necessary to support the Petition.
26 Petitioner states that information previously provided to the SWRCB includes Permittee
27 Reports which are consistent SWP water rights and include the nature of SWP operations. It
28 appears that SWP operations are not fully disclosed or understood such that the Petition can be

1 granted.

2 The Petition states that it is “not possible at this time to accurately predict future
3 operations and diversion levels at specific times during the extension period.” This can only
4 mean that the Petitioner cannot adequately evaluate the effects and impacts of the project on
5 other beneficial users or uses, or justify support of the Petition. Any environmental evaluation
6 would by definition include current and future operations and diversions during the time the
7 project is in effect.

8 Based on the above, Protestants believe that the Petition cannot go forward and cannot
9 be approved. Current CVP operations adversely affect Protestants’ water rights, the water
10 rights of other area of origin and in-Delta users, and public trust and environmental needs.
11 Until such time as the Petitioner describes how it can and will operate without such adverse
12 impacts to superior needs, and how it will comply with existing laws and regulations, the
13 Petition should not proceed.

14

15

Respectfully submitted,

16

17

Dated: September 20, 2010

JOHN HERRICK, Attorney for Protestants

18

19

20

21

22

23

24

25

26

27

28

1 **PROOF OF SERVICE BY E-MAIL**

2 I declare as follows:

3 I am over eighteen years or age and not a party to the within entitled action. My
4 business address is the Law Office of John Herrick, 4255 Pacific Avenue, Suite 2, Stockton,
5 California, 95207. I am employed in San Joaquin County, California. At approximately 4:20
6 p.m., I caused the Protest to Petition by SOUTH DELTA WATER AGENCY, CENTRAL
7 DELTA WATER AGENCY, LAFAYETTE RANCH INC. and R. C. FARMS INC. to be sent
8 to the persons at the e-mail addresses listed below. I did not receive, within a reasonable time
9 after the transmission, any electronic message or other indication that the transmission was
10 unsuccessful.

11 Kgaffney@waterboards.ca.gov

Kate Gaffney, SWRCB Division of Water Rights
Erick D. Sonderlund, Ca Department of Water Resources

12
13 I declare under penalty of perjury under the laws of the State of California that the
14 foregoing is true and correct.

15 EXECUTED on September 20 2010, at Stockton, California.

16 _____
17 Dayle Daniels
18
19
20
21
22
23
24
25
26
27
28

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>

PROTEST – (Petitions)

BASED ON ENVIRONMENTAL OR PUBLIC INTEREST CONSIDERATIONS

APPLICATION: 5629 PERMIT: 16480
APPLICATION: 14444 PERMIT: 16480
APPLICATION: 5630 PERMIT: 16478
APPLICATION: 14443 PERMIT: 16479
APPLICATION: 14445A PERMIT: 16481
APPLICATION: 17512 PERMIT: 16482

We, the California Sportfishing Protection Alliance; Chris Shutes, 1608 Francisco St., Berkeley, CA 94703; Bill Jennings, 3536 Rainier Ave, Stockton, CA 95204; and Michael Jackson, P.O. Box 207, 429 West Main St., Quincy, CA 95971, have read carefully the August 19, 2010 notice relative to the petitions for extension of time of the **State Water Project of the Department of Water Resources** for above-listed permits under the above-listed applications. The summaries of the permits, including counties, places of use, points of diversion, amounts, and seasons are given in the Notice for these petitions, which is available on the Board’s website at http://www.swrcb.ca.gov/waterrights/water_issues/programs/applications/petitions/2010/5629not.pdf.

It is desired to protest against the approval thereof because to the best of our information and belief:

The proposed application/petition for water will:

- (1) not be within the State Water Resources Control Board’s (SWRCB) jurisdiction
- (2) not best serve the public interest** X
- (3) be contrary to law** X
- (4) have an adverse environmental impact** X

State Facts, which support the foregoing allegations:

In Water Rights Order WR 2008-045, the State Water Resources Control Board described the law regarding petitions for extension of time:

The Board’s regulations provide that the Board will grant a petition for an extension of time only upon such conditions as the Board determines to be in the public interest, and only upon a showing that (1) due diligence has been exercised, (2) failure to comply with previous time requirements was caused by obstacles which could not reasonably be avoided, and (3) satisfactory progress will be made if an extension is granted. (Cal. Code Regs., tit. 23, § 844.)

There is no definition of a project that will be analyzed under CEQA in support of the requested permit extensions. However, petitioner states that it anticipates that it will construct no new facilities within the time period covered by its request for a five-year extension of time on the subject permits.

If new facilities are contemplated, then these petitions are legally incomplete since they do not include descriptions of the new facilities, points of diversion and rediversion, and other relevant information necessary to understand operation and impacts of such new facilities; in such case, these petitions should be denied.

Assuming that no new facilities will be constructed during the next five years pursuant to these permits, there is no reasonable expectation that petitioner will increase the amounts of maximum use compared to previous use during the allowed time for the permit. Since no “satisfactory progress will be made if an extension is granted,” the petitions should be denied. Moreover, if petitioner were to divert amounts greater than the maximum amount diverted heretofore under any aspects of the affected permits, whether direct diversion or to storage, this would have adverse environmental impacts and be contrary to the public interest.

In the petitions, petitioner analyzes the aspects of the subject permits where maximum permitted use has been achieved, and those aspects where maximum permitted use has not.

Water use under Permit 16477 (Application 5629) has already reached the maximum rate of direct diversion and maximum amount of storage. There is no need to extend the time for this permit; it should be licensed subject to conditions resulting from a public trust analysis by the State Board.

Water use under Permit 16478 (Application 5630) has also already reached the maximum rate of direct diversion and maximum of storage. There is no need to extend the time for this permit; it should also be licensed subject to conditions resulting from a public trust analysis by the State Board.

Direct diversion at Oroville Dam under Permit 16479 (Application 14443) has already been achieved. “Maximum annual diversion to storage from the Feather River at Lake Oroville is 2,488,607 AF during the 1977/78 water year” (Petition for 5630 et al, Supplement, point 5). 1977 was the driest water year in recorded history in California. There is no hydrologic or operational explanation that would support a reasonable expectation of increasing the annual amount diverted to storage at that facility. Given DWR’s own advocacy of the importance of maintaining the coldwater pool in Oroville, withdrawals from Oroville that would occasion exceedence of the previous maximum diversion to storage would have a clear adverse environmental impact to fisheries downstream of Oroville Dam, and such impact would not be in the public interest.

Diversion to storage at San Luis Reservoir from Delta Channels has already exceeded the maximum storage amount allowed under Permit 16479 (Application 14443). The direct

diversion from Delta Channels of the maximum amount allowed under this permit would have an adverse environmental impact and would not be in the public interest. Indeed, the recent Delta Flow Informational Proceeding, its extensive record, and the resulting Delta Flow Criteria Report (*Development of Flow Criteria for the Sacramento-San Joaquin Delta Ecosystem*, approved by the Board August 3, 2010) demonstrate that existing and historic levels of diversion by the State Water Project from Delta Channels has had tremendous adverse environmental impacts; increased diversion through these facilities would clearly have adverse environmental impacts on a Delta ecosystem in crisis, impacts that would not be in the public interest.

Permit 16479 (Application 14443) should therefore be licensed, subject to reductions and other appropriate conditions pursuant to a public trust analysis that should be conducted by the State Board.

Direct diversion at Oroville Dam under Permit 16480 (Application 14444) has also already been achieved. “Maximum annual diversion to storage from the Feather River at Lake Oroville is 2,488,607 AF during the 1977/78 water year” (Petition for 5630 et al, Supplement, point 5). 1977 was the driest water year in recorded history in California. There is no hydrologic or operational explanation that would support a reasonable expectation of increasing the annual amount diverted to storage at that facility. Given DWR’s own advocacy of the importance of maintaining the coldwater pool in Oroville,¹ withdrawals from Oroville that would occasion exceedence of the previous maximum diversion to storage would have a clear adverse environmental impact to fisheries downstream of Oroville Dam, and such impact would not be in the public interest. Permit 16480 (Application 14444) should therefore also be licensed subject to conditions resulting from a public trust analysis by the State Board.

Water use under Permit 16481 (Application 14445A) has already reached the maximum rate of direct diversion and maximum amount of storage. There is no need to extend the time for this permit; it should be licensed subject to conditions resulting from a public trust analysis by the State Board.

Water use under Permit 16482 (Application 17512) is not described in the subject petitions. However, it has likely already reached the maximum amount of storage or something very close to it. Either there is no need to extend the time for this permit, and it should be licensed for that reason; or else full use of maximum annual storage amounts would have adverse fish and wildlife impacts at San Luis Reservoir, and would likely have adverse environmental impacts due to Delta pumping, and it should be licensed for that reason. In the latter case, the permit should be licensed subject to conditions resulting from a public trust analysis by the State Board.

¹ See Comments of Mark Cowin, DWR, on draft *Delta Flow Criteria Report*, July 29, 2010, p. 2. http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/deltaflow/docs/comments072910/mark_cowin.pdf

In the Supplement to Petition of Extension of Time for Permit 16477 (Application 5629), and Permit 14444 (Permit 16480), petitioner states that DWR must “maintain operational flexibility to meet DWR contractual obligations, and maximize power generation to allow the SWP to reduce its reliance on fossil fuel based power sources to meet the Project’s annual power demand.” However, the more contractual obligations DWR meets, the greater the need for fossil fuel-based power generation it creates, because the State Water Project consumes more power than it produces. The petitions do not describe how flexibility can be achieved by increasing diversions, or how greater diversions under the permits will decrease use of fossil fuel for power generation; they simply state a generality based on a generalization of a public interest. The same Supplement also states that “sufficient demand exists for the power that could be generated by maximum diversions authorized under the Power Permits.” It is not in the public interest for DWR to be given special dispensation to be allowed to justify its time extension petition based on demand alone; it must demonstrate that “satisfactory progress will be made if an extension is granted,” just as every other petitioner for extension of time must demonstrate. DWR has made no such showing whatever.

DWR’s discussion of the complexity of the State Water Project equally should not be grounds to grant DWR special dispensation. In addition, the speculated future of the State Water Project has no appropriate place in the subject petitions. The Supplement to the Petition for Application 5630 et al states: “The Delta Plan is intended to further restoration of the Delta ecosystem and a reliable water supply. The implementation of the Delta Plan is likely to influence future construction of SWP facilities and SWP water supply delivery.” However, Attachment 1 to the same petition says: “The project does not involve the construction of any new facilities or expansion of authorized uses beyond those currently authorized under the permits listed above.” Speculated future actions or changes related to the State Water Project have no place in the subject petitions, and should be ignored by the Board in considering these petitions on the merits.

Under what conditions may this protest be disregarded and dismissed?


1. Complete project-specific environmental documentation for the extension of time of these permits must be completed. A full range of alternatives, including reduced use of the permits, must be analyzed in a manner that is compliant with CEQA. CSPA reserves the right to revise or add to its dismissal terms based on review of environmental documents.
2. DWR must complete an accounting of water used under each permit, and describe how it plans to use additional water in the future. CSPA reserves the right to revise or add to its dismissal terms based on analysis of that accounting.
3. The petitions for extension of time should be denied, and the permits should be licensed for operation that is consistent with applicable law, including the Public Trust Doctrine, The Clean Water Act, Section 5937 of the Fish and Game Code, the California Water Code (and particularly its provision in Section 275 against unreasonable method of diversion), salinity standards under D-1641, and the Porter-Cologne Water Quality

Control Act. The licenses should be required to comply with all applicable Biological Opinions.

A true copy of this protest has been served upon the petitioner by mail.
(Personally or by mail)

Date: October 13, 2010.

Chris Shutes, Water Rights Advocate
Bill Jennings, Executive Director
Michael Jackson
California Sportfishing Protection Alliance


Chris Shutes
(signed on his own behalf and for
Bill Jennings and Michael
Jackson)

Protestant(s) Authorized Representative sign here

cc:
Erick D. Soderlund
Department of Water Resources
1416 Ninth St.
Sacramento, CA 95818

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>

PROTEST – (Petitions)

BASED ON ENVIRONMENTAL OR PUBLIC INTEREST CONSIDERATIONS

Protests based on Injury to Prior Water Rights should be completed on other side of form

APPLICATION A005629 **PERMIT** 16477 **LICENSE** _____

We, the California Water Impact Network (P.O. Box 148, Quincy, CA 95971; 639 San Carlos Avenue, Albany, CA 94706) and AquAlliance (P.O. Box 4024, Chico, CA 95927) have read carefully a notice relative to a petition for extension of time under APPLICATION A005629 of California Department of Water Resources to divert water from Oroville Dam; Thermalito Diversion Dam; Feather River Fish Hatchery Dam; Thermalito Forebay Dam; and Thermalito Afterbay Dam at the rate of 7,600 (Jan 1 to Dec 31) and to contribute to storage 380,000 acre-feet of water year-round for Power; incidental recreational and fish and wildlife enhancement within the entire place of use defined as Oroville Dam Powerplant; Thermalito Forebay Dam Powerplant; and Thermalito Diversion Dam Powerplant for power; various project facilities associated with Oroville Dam and Reservoir and the Feather River below Oroville Dam. The estimated face value of this permit is 5,885,900 acre-feet.

It is desired to protest against the approval thereof because to the best of our information and belief the proposed change/extension will:

1. not be within the State Water Resources Control Board's jurisdiction
2. not best serve the public interest
3. be contrary to law
4. have an adverse environmental impact

State facts, which support the foregoing allegations:

1) Granting of the petitions would have adverse environmental impacts:

- ❖ High Delta export pump rates this decade have caused pelagic organism crashes since 2005 and closure of commercial salmon fisheries the last two years; full application of pumping rates as found in the permits would exacerbate these deplorable fishery conditions.
- ❖ The construction of dams and their operations have seriously diminished salmonid spawning and terrestrial species habitats in Central Valley rivers, streams, grasslands, and riparian corridors. Full application of contributions to surface or ground water storage in the Sacramento Valley as found in the permits will expand and accelerate these habitat conditions that are pushing numerous species toward extinction.
- ❖ Pesticides sprayed or used on crops irrigated with Central Valley Project (CVP) and State Water Project (SWP) water adversely affect the health of humans as well as wildlife. As merely one example, in Fresno County and the Central Valley area, the incidence of Parkinson's Disease in humans is at least twice as prevalent as in the San Francisco Bay Area, according to an analysis conducted for the Department of Veterans Affairs. Pesticide use on irrigated lands continues also in the Sacramento Valley and may pose similar long-term health risks. This is attributed to toxic air, water or by direct exposure of individuals to pesticide spraying or use on irrigated lands in the western San Joaquin Valley. Pesticide use on irrigated lands continues also in the Sacramento Valley and may pose similar long-term health risks.
- ❖ The Department of Water Resources is responsible, along with the US Bureau of

Reclamation, for meeting southern Delta salinity standards under D-1641, but has regularly failed to meet these standards with the water it has already been applying to beneficial use. Full application of water service to permitted places of use of the San Joaquin Valley and Tulare Lake Basin and southern California water service areas of the State Water Project would exacerbate these poor water quality conditions and may hasten irreversible destruction of open water fish species native to the San Francisco Bay Delta Estuary.

2) Granting of the petitions would be contrary to the public interest:

- ❖ Environmental consequences of extensions of time on these permits would exacerbate economic impacts of State Water Project operations on communities depending on salmonid fisheries and agricultural lands in the south Delta whose water supplies are compromised by Central Valley Project salinity violations.

3) Granting of the petitions would be contrary to law:

- ❖ Approval of extensions of time for these permits would continue appropriation of water in "cold storage," nearly 20 years after many of these rights were to have been fulfilled. Delay in licensing these projects given the lack of due diligence in applying the water rights to full beneficial use is contrary to appropriative water rights law.
- ❖ Approval of extensions of time would enable continuing violations of the federal Clean Water Act and Porter-Cologne Water Quality Control Act, Fish and Game Code 5937; the public trust doctrine, and the California Constitution, Article X, Section 2.
- ❖ The environmental information contained in the petitions associated with these time extension requests is insufficient and inadequate for compliance with the California Environmental Quality Act.

The State Water Resources Control Board reported to the Delta Vision Task Force in 2008 that while the Central Valley watershed of California has an average annual runoff of 29 million acre-feet, the face value of water rights granted by the state to appropriative water right holders amounted to 245 million acre-feet. This means that for every acre-foot of real water in the Central Valley watershed, 8.4 acre-feet of water is promised through past water board action. This is contrary to the public interest. The face-value of permits on which the Department of Water Resources requests extension of time amounts to over 30 million acre-feet, which also exceeds average Valley runoff conditions, and is well above its major source, the Feather River. The California Water Impact Network and AquAlliance believe that an environmental impact report *must* be prepared on these petitions to identify ecologically sustainable direct diversion rates (if any) and contributions to storage that will end the egregious injuries we identify in our protests.

The State Water Resources Control Board in its notice has provided no analysis of how much water has been appropriated under each Bureau permit, and how much would remain to be applied fully to beneficial uses. The Department of Water Resources, in its supplement to the petition, acknowledges that it has not yet fully applied water from its State Water Project permits. The current sources of uncertainty they identify for their inability to make these determinations are not among the legitimate grounds for extension of time. We urge the State Water Board to make determinations for each State Water Project petition consistent with the Public Trust Doctrine, the federal Clean Water Act, California Fish and Game Code Section 5937, the federal Central Valley Project Improvement Act of 1992 Section 3406(b)(1), and California Constitution Article X, Section 2.

Under what conditions may this protest be disregarded and dismissed? Revocation of these State Water Project permits and issuance of licenses for their operations at levels of direct diversion and collection for storage that are consistent with the Public Trust Doctrine, the

federal Clean Water Act, California Fish and Game Code Section 5937, the federal Central Valley Project Improvement Act of 1992 Section 3406(b)(1), and California Constitution Article X, Section 2.

A true copy of this protest has been served upon the petitioner: Erick D. Soderlund, California Department of Water Resources, 1416 Ninth Street, Sacramento, CA 95818.

Date October 14, 2010



Protestant(s) or Authorized Representative sign here

Date October 14, 2010



Protestant(s) or Authorized Representative sign here

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>

PROTEST – (Petitions)

BASED ON ENVIRONMENTAL OR PUBLIC INTEREST CONSIDERATIONS

Protests based on Injury to Prior Water Rights should be completed on other side of form

APPLICATION A005630 **PERMIT** 16478 **LICENSE** _____

We, the California Water Impact Network (P.O. Box 148, Quincy, CA 95971; 639 San Carlos Avenue, Albany, CA 94706) and AquAlliance (P.O. Box 4024, Chico, CA 95927) have read carefully a notice relative to a petition for extension of time under APPLICATION A005630 of California Department of Water Resources to divert water from Oroville Dam; Thermalito Diversion Dam; Feather River Fish Hatchery Dam; Thermalito Forebay Dam; Thermalito Afterbay Dam; Delta Water Facilities; California Aqueduct Intake; Clifton Court Forebay; Tracy Pumping Plant; North Bay Aqueduct Intake; Del Valle Dam; San Luis Forebay Dam; San Luis Dam; Cedar Springs Dam; Pyramid Dam; Perris Dam; and Castaic Dam at the rate of 1,400 (Jan 1 to Dec 31) and to contribute to storage 380,000 acre-feet of water year-round for Irrigation, domestic, municipal, industrial, salinity control, recreational, fish and wildlife enhancement; and incidental hydropower generation. within the entire place of use defined as 9.5 million acres within a gross area of 29.4 million acres within the service area of the State Water Project; 4,015 acres within Oak Flat Water District; 466 acres within a gross area of 2,300 acres within Diablo Grande project in Western Hill Water District; incidental hydropower generation at San Luis; San Luis Obispo; Cottonwood; Pyramid; Castaic; Devil Canyon #s 1 and 2; Del Valle; and Mojave Siphon power plants. The estimated face value of this permit is 1,394,200 acre-feet.

It is desired to protest against the approval thereof because to the best of our information and belief the proposed change/extension will:

1. not be within the State Water Resources Control Board's jurisdiction
2. not best serve the public interest
3. be contrary to law
4. have an adverse environmental impact

State facts, which support the foregoing allegations:

1) **Granting of the petitions would have adverse environmental impacts:**

- ❖ High Delta export pump rates this decade have caused pelagic organism crashes since 2005 and closure of commercial salmon fisheries the last two years; full application of pumping rates as found in the permits would exacerbate these deplorable fishery conditions.
- ❖ The construction of dams and their operations have seriously diminished salmonid spawning and terrestrial species habitats in Central Valley rivers, streams, grasslands, and riparian corridors. Full application of contributions to surface or ground water storage in the Sacramento Valley as found in the permits will expand and accelerate these habitat conditions that are pushing numerous species toward extinction.
- ❖ Pesticides sprayed or used on crops irrigated with Central Valley Project (CVP) and State Water Project (SWP) water adversely affect the health of humans as well as wildlife. As merely one example, in Fresno County and the Central Valley area, the incidence of Parkinson's Disease in humans is at least twice as prevalent as in the San Francisco Bay Area, according to an analysis conducted for the Department of Veterans Affairs. Pesticide use on irrigated lands continues also in the Sacramento

Valley and may pose similar long-term health risks. This is attributed to toxic air, water or by direct exposure of individuals to pesticide spraying or use on irrigated lands in the western San Joaquin Valley. Pesticide use on irrigated lands continues also in the Sacramento Valley and may pose similar long-term health risks.

- ❖ The Department of Water Resources is responsible, along with the US Bureau of Reclamation, for meeting southern Delta salinity standards under D-1641, but has regularly failed to meet these standards with the water it has already been applying to beneficial use. Full application of water service to permitted places of use of the San Joaquin Valley and Tulare Lake Basin and southern California water service areas of the State Water Project would exacerbate these poor water quality conditions and may hasten irreversible destruction of open water fish species native to the San Francisco Bay Delta Estuary.

2) Granting of the petitions would be contrary to the public interest:

- ❖ Environmental consequences of extensions of time on these permits would exacerbate economic impacts of State Water Project operations on communities depending on salmonid fisheries and agricultural lands in the south Delta whose water supplies are compromised by Central Valley Project salinity violations.

3) Granting of the petitions would be contrary to law:

- ❖ Approval of extensions of time for these permits would continue appropriation of water in "cold storage," nearly 20 years after many of these rights were to have been fulfilled. Delay in licensing these projects given the lack of due diligence in applying the water rights to full beneficial use is contrary to appropriative water rights law.
- ❖ Approval of extensions of time would enable continuing violations of the federal Clean Water Act and Porter-Cologne Water Quality Control Act, Fish and Game Code 5937; the public trust doctrine, and the California Constitution, Article X, Section 2.
- ❖ The environmental information contained in the petitions associated with these time extension requests is insufficient and inadequate for compliance with the California Environmental Quality Act.

The State Water Resources Control Board reported to the Delta Vision Task Force in 2008 that while the Central Valley watershed of California has an average annual runoff of 29 million acre-feet, the face value of water rights granted by the state to appropriative water right holders amounted to 245 million acre-feet. This means that for every acre-foot of real water in the Central Valley watershed, 8.4 acre-feet of water is promised through past water board action. This is contrary to the public interest. The face-value of permits on which the Department of Water Resources requests extension of time amounts to over 30 million acre-feet, which also exceeds average Valley runoff conditions, and is well above its major source, the Feather River. The California Water Impact Network and AquAlliance believe that an environmental impact report *must* be prepared on these petitions to identify ecologically sustainable direct diversion rates (if any) and contributions to storage that will end the egregious injuries we identify in our protests.

The State Water Resources Control Board in its notice has provided no analysis of how much water has been appropriated under each Bureau permit, and how much would remain to be applied fully to beneficial uses. The Department of Water Resources, in its supplement to the petition, acknowledges that it has not yet fully applied water from its State Water Project permits. The current sources of uncertainty they identify for their inability to make these determinations are not among the legitimate grounds for extension of time. We urge the State Water Board to make determinations for each State Water Project petition consistent with the Public Trust Doctrine, the federal Clean Water Act, California Fish and Game Code Section 5937, the federal Central Valley Project Improvement Act of 1992 Section 3406(b)(1), and California Constitution Article X,

Section 2.

Under what conditions may this protest be disregarded and dismissed? Revocation of these State Water Project permits and issuance of licenses for their operations at levels of direct diversion and collection for storage that are consistent with the Public Trust Doctrine, the federal Clean Water Act, California Fish and Game Code Section 5937, the federal Central Valley Project Improvement Act of 1992 Section 3406(b)(1), and California Constitution Article X, Section 2.

A true copy of this protest has been served upon the petitioner: Erick D. Soderlund, California Department of Water Resources, 1416 Ninth Street, Sacramento, CA 95818.

Date October 14, 2010



Protestant(s) or Authorized Representative sign here

Date October 14, 2010



Protestant(s) or Authorized Representative sign here

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>

PROTEST – (Petitions)

BASED ON ENVIRONMENTAL OR PUBLIC INTEREST CONSIDERATIONS

Protests based on Injury to Prior Water Rights should be completed on other side of form

APPLICATION A014443 **PERMIT** 16479 **LICENSE**

We, the California Water Impact Network (P.O. Box 148, Quincy, CA 95971; 639 San Carlos Avenue, Albany, CA 94706) and AquAlliance (P.O. Box 4024, Chico, CA 95927) have read carefully a notice relative to a petition for extension of time under APPLICATION A014443 of California Department of Water Resources to divert water from Oroville Dam; Thermalito Diversion Dam; Feather River Fish Hatchery Dam; Thermalito Forebay Dam; Thermalito Afterbay Dam; Delta Water Facilities; California Aqueduct Intake; Clifton Court Forebay; Tracy Pumping Plant; North Bay Aqueduct Intake; Del Valle Dam; San Luis Forebay Dam; San Luis Dam; Cedar Springs Dam; Pyramid Dam; Perris Dam; and Castaic Dam at the rate of 1,360 (Jan 1 to Dec 31) and to contribute to storage 3,500,000 acre-feet of water year-round for Irrigation, domestic, municipal, industrial, salinity control, recreational, fish and wildlife enhancement; and incidental hydropower generation. within the entire place of use defined as 9.5 million acres within a gross area of 29.4 million acres within the service area of the State Water Project; 4,015 acres within Oak Flat Water District; 466 acres within a gross area of 2,300 acres within Diablo Grande project in Western Hill Water District; incidental hydropower generation at San Luis; San Luis Obispo; Cottonwood; Pyramid; Castaic; Devil Canyon #s 1 and 2; Del Valle; and Mojave Siphon power plants. The estimated face value of this permit is 4,485,300 acre-feet.

It is desired to protest against the approval thereof because to the best of our information and belief the proposed change/extension will:

1. not be within the State Water Resources Control Board's jurisdiction
2. not best serve the public interest
3. be contrary to law
4. have an adverse environmental impact

State facts, which support the foregoing allegations:

1) **Granting of the petitions would have adverse environmental impacts:**

- ❖ High Delta export pump rates this decade have caused pelagic organism crashes since 2005 and closure of commercial salmon fisheries the last two years; full application of pumping rates as found in the permits would exacerbate these deplorable fishery conditions.
- ❖ The construction of dams and their operations have seriously diminished salmonid spawning and terrestrial species habitats in Central Valley rivers, streams, grasslands, and riparian corridors. Full application of contributions to surface or ground water storage in the Sacramento Valley as found in the permits will expand and accelerate these habitat conditions that are pushing numerous species toward extinction.
- ❖ Pesticides sprayed or used on crops irrigated with Central Valley Project (CVP) and State Water Project (SWP) water adversely affect the health of humans as well as wildlife. As merely one example, in Fresno County and the Central Valley area, the incidence of Parkinson's Disease in humans is at least twice as prevalent as in the San Francisco Bay Area, according to an analysis conducted for the Department of Veterans Affairs. Pesticide use on irrigated lands continues also in the Sacramento

Valley and may pose similar long-term health risks. This is attributed to toxic air, water or by direct exposure of individuals to pesticide spraying or use on irrigated lands in the western San Joaquin Valley. Pesticide use on irrigated lands continues also in the Sacramento Valley and may pose similar long-term health risks.

- ❖ The Department of Water Resources is responsible, along with the US Bureau of Reclamation, for meeting southern Delta salinity standards under D-1641, but has regularly failed to meet these standards with the water it has already been applying to beneficial use. Full application of water service to permitted places of use of the San Joaquin Valley and Tulare Lake Basin and southern California water service areas of the State Water Project would exacerbate these poor water quality conditions and may hasten irreversible destruction of open water fish species native to the San Francisco Bay Delta Estuary.

2) Granting of the petitions would be contrary to the public interest:

- ❖ Environmental consequences of extensions of time on these permits would exacerbate economic impacts of State Water Project operations on communities depending on salmonid fisheries and agricultural lands in the south Delta whose water supplies are compromised by Central Valley Project salinity violations.

3) Granting of the petitions would be contrary to law:

- ❖ Approval of extensions of time for these permits would continue appropriation of water in "cold storage," nearly 20 years after many of these rights were to have been fulfilled. Delay in licensing these projects given the lack of due diligence in applying the water rights to full beneficial use is contrary to appropriative water rights law.
- ❖ Approval of extensions of time would enable continuing violations of the federal Clean Water Act and Porter-Cologne Water Quality Control Act, Fish and Game Code 5937; the public trust doctrine, and the California Constitution, Article X, Section 2.
- ❖ The environmental information contained in the petitions associated with these time extension requests is insufficient and inadequate for compliance with the California Environmental Quality Act.

The State Water Resources Control Board reported to the Delta Vision Task Force in 2008 that while the Central Valley watershed of California has an average annual runoff of 29 million acre-feet, the face value of water rights granted by the state to appropriative water right holders amounted to 245 million acre-feet. This means that for every acre-foot of real water in the Central Valley watershed, 8.4 acre-feet of water is promised through past water board action. This is contrary to the public interest. The face-value of permits on which the Department of Water Resources requests extension of time amounts to over 30 million acre-feet, which also exceeds average Valley runoff conditions, and is well above its major source, the Feather River. The California Water Impact Network and AquAlliance believe that an environmental impact report *must* be prepared on these petitions to identify ecologically sustainable direct diversion rates (if any) and contributions to storage that will end the egregious injuries we identify in our protests.

The State Water Resources Control Board in its notice has provided no analysis of how much water has been appropriated under each Bureau permit, and how much would remain to be applied fully to beneficial uses. The Department of Water Resources, in its supplement to the petition, acknowledges that it has not yet fully applied water from its State Water Project permits. The current sources of uncertainty they identify for their inability to make these determinations are not among the legitimate grounds for extension of time. We urge the State Water Board to make determinations for each State Water Project petition consistent with the Public Trust Doctrine, the federal Clean Water Act, California Fish and Game Code Section 5937, the federal Central Valley Project Improvement Act of 1992 Section 3406(b)(1), and California Constitution Article X,

Section 2.

Under what conditions may this protest be disregarded and dismissed? Revocation of these State Water Project permits and issuance of licenses for their operations at levels of direct diversion and collection for storage that are consistent with the Public Trust Doctrine, the federal Clean Water Act, California Fish and Game Code Section 5937, the federal Central Valley Project Improvement Act of 1992 Section 3406(b)(1), and California Constitution Article X, Section 2.

A true copy of this protest has been served upon the petitioner: Erick D. Soderlund, California Department of Water Resources, 1416 Ninth Street, Sacramento, CA 95818.

Date October 14, 2010



Protestant(s) or Authorized Representative sign here

Date October 14, 2010



Protestant(s) or Authorized Representative sign here

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>

PROTEST – (Petitions)

BASED ON ENVIRONMENTAL OR PUBLIC INTEREST CONSIDERATIONS

Protests based on Injury to Prior Water Rights should be completed on other side of form

APPLICATION A014444 **PERMIT** 16480 **LICENSE**

We, the California Water Impact Network (P.O. Box 148, Quincy, CA 95971; 639 San Carlos Avenue, Albany, CA 94706) and AquAlliance (P.O. Box 4024, Chico, CA 95927) have read carefully a notice relative to a petition for extension of time under APPLICATION A014444 of California Department of Water Resources to divert water from Oroville Dam; Thermalito Diversion Dam; Feather River Fish Hatchery Dam; Thermalito Forebay Dam; Thermalito Afterbay Dam at the rate of 11,000 (Jan 1 to Dec 31) and to contribute to storage 3,500,000 acre-feet of water year-round for Power; incidental recreational and fish and wildlife enhancement within the entire place of use defined as Oroville Dam Powerplant; Thermalito Forebay Dam Powerplant The estimated face value of this permit is 11,469,100 acre-feet.

It is desired to protest against the approval thereof because to the best of our information and belief the proposed change/extension will:

1. not be within the State Water Resources Control Board's jurisdiction
2. not best serve the public interest
3. be contrary to law
4. have an adverse environmental impact

State facts, which support the foregoing allegations:

1) Granting of the petitions would have adverse environmental impacts:

- ❖ High Delta export pump rates this decade have caused pelagic organism crashes since 2005 and closure of commercial salmon fisheries the last two years; full application of pumping rates as found in the permits would exacerbate these deplorable fishery conditions.
- ❖ The construction of dams and their operations have seriously diminished salmonid spawning and terrestrial species habitats in Central Valley rivers, streams, grasslands, and riparian corridors. Full application of contributions to surface or ground water storage in the Sacramento Valley as found in the permits will expand and accelerate these habitat conditions that are pushing numerous species toward extinction.
- ❖ Pesticides sprayed or used on crops irrigated with Central Valley Project (CVP) and State Water Project (SWP) water adversely affect the health of humans as well as wildlife. As merely one example, in Fresno County and the Central Valley area, the incidence of Parkinson's Disease in humans is at least twice as prevalent as in the San Francisco Bay Area, according to an analysis conducted for the Department of Veterans Affairs. Pesticide use on irrigated lands continues also in the Sacramento Valley and may pose similar long-term health risks. This is attributed to toxic air, water or by direct exposure of individuals to pesticide spraying or use on irrigated lands in the western San Joaquin Valley. Pesticide use on irrigated lands continues also in the Sacramento Valley and may pose similar long-term health risks.
- ❖ The Department of Water Resources is responsible, along with the US Bureau of Reclamation, for meeting southern Delta salinity standards under D-1641, but has

regularly failed to meet these standards with the water it has already been applying to beneficial use. Full application of water service to permitted places of use of the San Joaquin Valley and Tulare Lake Basin and southern California water service areas of the State Water Project would exacerbate these poor water quality conditions and may hasten irreversible destruction of open water fish species native to the San Francisco Bay Delta Estuary.

2) Granting of the petitions would be contrary to the public interest:

- ❖ Environmental consequences of extensions of time on these permits would exacerbate economic impacts of State Water Project operations on communities depending on salmonid fisheries and agricultural lands in the south Delta whose water supplies are compromised by Central Valley Project salinity violations.

3) Granting of the petitions would be contrary to law:

- ❖ Approval of extensions of time for these permits would continue appropriation of water in "cold storage," nearly 20 years after many of these rights were to have been fulfilled. Delay in licensing these projects given the lack of due diligence in applying the water rights to full beneficial use is contrary to appropriate water rights law.
- ❖ Approval of extensions of time would enable continuing violations of the federal Clean Water Act and Porter-Cologne Water Quality Control Act, Fish and Game Code 5937; the public trust doctrine, and the California Constitution, Article X, Section 2.
- ❖ The environmental information contained in the petitions associated with these time extension requests is insufficient and inadequate for compliance with the California Environmental Quality Act.

The State Water Resources Control Board reported to the Delta Vision Task Force in 2008 that while the Central Valley watershed of California has an average annual runoff of 29 million acre-feet, the face value of water rights granted by the state to appropriate water right holders amounted to 245 million acre-feet. This means that for every acre-foot of real water in the Central Valley watershed, 8.4 acre-feet of water is promised through past water board action. This is contrary to the public interest. The face-value of permits on which the Department of Water Resources requests extension of time amounts to over 30 million acre-feet, which also exceeds average Valley runoff conditions, and is well above its major source, the Feather River. The California Water Impact Network and AquAlliance believe that an environmental impact report *must* be prepared on these petitions to identify ecologically sustainable direct diversion rates (if any) and contributions to storage that will end the egregious injuries we identify in our protests.

The State Water Resources Control Board in its notice has provided no analysis of how much water has been appropriated under each Bureau permit, and how much would remain to be applied fully to beneficial uses. The Department of Water Resources, in its supplement to the petition, acknowledges that it has not yet fully applied water from its State Water Project permits. The current sources of uncertainty they identify for their inability to make these determinations are not among the legitimate grounds for extension of time. We urge the State Water Board to make determinations for each State Water Project petition consistent with the Public Trust Doctrine, the federal Clean Water Act, California Fish and Game Code Section 5937, the federal Central Valley Project Improvement Act of 1992 Section 3406(b)(1), and California Constitution Article X, Section 2.

Under what conditions may this protest be disregarded and dismissed? Revocation of these State Water Project permits and issuance of licenses for their operations at levels of direct diversion and collection for storage that are consistent with the Public Trust Doctrine, the federal Clean Water Act, California Fish and Game Code Section 5937, the federal Central

Valley Project Improvement Act of 1992 Section 3406(b)(1), and California Constitution Article X, Section 2.

A true copy of this protest has been served upon the petitioner: Erick D. Soderlund, California Department of Water Resources, 1416 Ninth Street, Sacramento, CA 95818.

Date October 14, 2010



Protestant(s) or Authorized Representative sign here

Date October 14, 2010



Protestant(s) or Authorized Representative sign here

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>

PROTEST – (Petitions)

BASED ON ENVIRONMENTAL OR PUBLIC INTEREST CONSIDERATIONS

Protests based on Injury to Prior Water Rights should be completed on other side of form

APPLICATION A014445A **PERMIT** 16481 **LICENSE**

We, the California Water Impact Network (P.O. Box 148, Quincy, CA 95971; 639 San Carlos Avenue, Albany, CA 94706) and AquAlliance (P.O. Box 4024, Chico, CA 95927) have read carefully a notice relative to a petition for extension of time under APPLICATION A014445A of California Department of Water Resources to divert water from Delta Water Facilities; California Aqueduct Intake; Clifton Court Forebay; Tracy Pumping Plant; North Bay Aqueduct Intake; Del Valle Dam; San Luis Forebay Dam; San Luis Dam; Cedar Springs Dam; Pyramid Dam; Perris Dam; and Castaic Dam at the rate of 2,115 (Jan 1 to Dec 31) and to contribute to storage 44,000 acre-feet of water year-round for Irrigation, domestic, municipal, industrial, salinity control, recreational, fish and wildlife enhancement; and incidental hydropower generation. within the entire place of use defined as 9.5 million acres within a gross area of 29.4 million acres within the service area of the State Water Project; 4,015 acres within Oak Flat Water District; 466 acres within a gross area of 2,300 acres within Diablo Grande project in Western Hill Water District; incidental hydropower generation at San Luis; San Luis Obispo; Cottonwood; Pyramid; Castaic; Devil Canyon #s 1 and 2; Del Valle; and Mojave Siphon power plants. The estimated face value of this permit is 1,576,200 acre-feet.

It is desired to protest against the approval thereof because to the best of our information and belief the proposed change/extension will:

1. not be within the State Water Resources Control Board's jurisdiction
2. not best serve the public interest
3. be contrary to law
4. have an adverse environmental impact

State facts, which support the foregoing allegations:

1) **Granting of the petitions would have adverse environmental impacts:**

- ❖ High Delta export pump rates this decade have caused pelagic organism crashes since 2005 and closure of commercial salmon fisheries the last two years; full application of pumping rates as found in the permits would exacerbate these deplorable fishery conditions.
- ❖ The construction of dams and their operations have seriously diminished salmonid spawning and terrestrial species habitats in Central Valley rivers, streams, grasslands, and riparian corridors. Full application of contributions to surface or ground water storage in the Sacramento Valley as found in the permits will expand and accelerate these habitat conditions that are pushing numerous species toward extinction.
- ❖ Pesticides sprayed or used on crops irrigated with Central Valley Project (CVP) and State Water Project (SWP) water adversely affect the health of humans as well as wildlife. As merely one example, in Fresno County and the Central Valley area, the incidence of Parkinson's Disease in humans is at least twice as prevalent as in the San Francisco Bay Area, according to an analysis conducted for the Department of Veterans Affairs. Pesticide use on irrigated lands continues also in the Sacramento Valley and may pose similar long-term health risks. This is attributed to toxic air,

water or by direct exposure of individuals to pesticide spraying or use on irrigated lands in the western San Joaquin Valley. Pesticide use on irrigated lands continues also in the Sacramento Valley and may pose similar long-term health risks.

- ❖ The Department of Water Resources is responsible, along with the US Bureau of Reclamation, for meeting southern Delta salinity standards under D-1641, but has regularly failed to meet these standards with the water it has already been applying to beneficial use. Full application of water service to permitted places of use of the San Joaquin Valley and Tulare Lake Basin and southern California water service areas of the State Water Project would exacerbate these poor water quality conditions and may hasten irreversible destruction of open water fish species native to the San Francisco Bay Delta Estuary.

2) Granting of the petitions would be contrary to the public interest:

- ❖ Environmental consequences of extensions of time on these permits would exacerbate economic impacts of State Water Project operations on communities depending on salmonid fisheries and agricultural lands in the south Delta whose water supplies are compromised by Central Valley Project salinity violations.

3) Granting of the petitions would be contrary to law:

- ❖ Approval of extensions of time for these permits would continue appropriation of water in "cold storage," nearly 20 years after many of these rights were to have been fulfilled. Delay in licensing these projects given the lack of due diligence in applying the water rights to full beneficial use is contrary to appropriative water rights law.
- ❖ Approval of extensions of time would enable continuing violations of the federal Clean Water Act and Porter-Cologne Water Quality Control Act, Fish and Game Code 5937; the public trust doctrine, and the California Constitution, Article X, Section 2.
- ❖ The environmental information contained in the petitions associated with these time extension requests is insufficient and inadequate for compliance with the California Environmental Quality Act.

The State Water Resources Control Board reported to the Delta Vision Task Force in 2008 that while the Central Valley watershed of California has an average annual runoff of 29 million acre-feet, the face value of water rights granted by the state to appropriative water right holders amounted to 245 million acre-feet. This means that for every acre-foot of real water in the Central Valley watershed, 8.4 acre-feet of water is promised through past water board action. This is contrary to the public interest. The face-value of permits on which the Department of Water Resources requests extension of time amounts to over 30 million acre-feet, which also exceeds average Valley runoff conditions, and is well above its major source, the Feather River. The California Water Impact Network and AquAlliance believe that an environmental impact report *must* be prepared on these petitions to identify ecologically sustainable direct diversion rates (if any) and contributions to storage that will end the egregious injuries we identify in our protests.

The State Water Resources Control Board in its notice has provided no analysis of how much water has been appropriated under each Bureau permit, and how much would remain to be applied fully to beneficial uses. The Department of Water Resources, in its supplement to the petition, acknowledges that it has not yet fully applied water from its State Water Project permits. The current sources of uncertainty they identify for their inability to make these determinations are not among the legitimate grounds for extension of time. We urge the State Water Board to make determinations for each State Water Project petition consistent with the Public Trust Doctrine, the federal Clean Water Act, California Fish and Game Code Section 5937, the federal Central Valley Project Improvement Act of 1992 Section 3406(b)(1), and California Constitution Article X, Section 2.

Under what conditions may this protest be disregarded and dismissed? Revocation of these State Water Project permits and issuance of licenses for their operations at levels of direct diversion and collection for storage that are consistent with the Public Trust Doctrine, the federal Clean Water Act, California Fish and Game Code Section 5937, the federal Central Valley Project Improvement Act of 1992 Section 3406(b)(1), and California Constitution Article X, Section 2.

A true copy of this protest has been served upon the petitioner: Erick D. Soderlund, California Department of Water Resources, 1416 Ninth Street, Sacramento, CA 95818.

Date October 14, 2010



Protestant(s) or Authorized Representative sign here

Date October 14, 2010



Protestant(s) or Authorized Representative sign here

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>

PROTEST – (Petitions)

BASED ON ENVIRONMENTAL OR PUBLIC INTEREST CONSIDERATIONS

Protests based on Injury to Prior Water Rights should be completed on other side of form

APPLICATION A017512 **PERMIT** 16482 **LICENSE**

We, the California Water Impact Network (P.O. Box 148, Quincy, CA 95971; 639 San Carlos Avenue, Albany, CA 94706) and AquAlliance (P.O. Box 4024, Chico, CA 95927) have read carefully a notice relative to a petition for extension of time under APPLICATION A017512 of California Department of Water Resources to divert water from Delta Water Facilities; California Aqueduct Intake; Clifton Court Forebay; Tracy Pumping Plant; North Bay Aqueduct Intake; Del Valle Dam; San Luis Forebay Dam; Cedar Springs Dam; Pyramid Dam; Perris Dam; and Castaic Dam at the rate of 0 (NA) and to contribute to storage 1,100,000 acre-feet of water year-round for Irrigation, domestic, municipal, industrial, salinity control, recreational, fish and wildlife enhancement; and incidental hydropower generation. within the entire place of use defined as 9.5 million acres within a gross area of 29.4 million acres within the service area of the State Water Project; 4,015 acres within Oak Flat Water District; 466 acres within a gross area of 2,300 acres within Diablo Grande project in Western Hill Water District; incidental hydropower generation at San Luis; San Luis Obispo; Cottonwood; Pyramid; Castaic; Devil Canyon #s 1 and 2; Del Valle; and Mojave Siphon power plants. The estimated face value of this permit is 1,100,000 acre-feet.

It is desired to protest against the approval thereof because to the best of our information and belief the proposed change/extension will:

1. not be within the State Water Resources Control Board's jurisdiction
2. not best serve the public interest
3. be contrary to law
4. have an adverse environmental impact

State facts, which support the foregoing allegations:

1) Granting of the petitions would have adverse environmental impacts:

- ❖ High Delta export pump rates this decade have caused pelagic organism crashes since 2005 and closure of commercial salmon fisheries the last two years; full application of pumping rates as found in the permits would exacerbate these deplorable fishery conditions.
- ❖ The construction of dams and their operations have seriously diminished salmonid spawning and terrestrial species habitats in Central Valley rivers, streams, grasslands, and riparian corridors. Full application of contributions to surface or ground water storage in the Sacramento Valley as found in the permits will expand and accelerate these habitat conditions that are pushing numerous species toward extinction.
- ❖ Pesticides sprayed or used on crops irrigated with Central Valley Project (CVP) and State Water Project (SWP) water adversely affect the health of humans as well as wildlife. As merely one example, in Fresno County and the Central Valley area, the incidence of Parkinson's Disease in humans is at least twice as prevalent as in the San Francisco Bay Area, according to an analysis conducted for the Department of Veterans Affairs. Pesticide use on irrigated lands continues also in the Sacramento Valley and may pose similar long-term health risks. This is attributed to toxic air,

water or by direct exposure of individuals to pesticide spraying or use on irrigated lands in the western San Joaquin Valley. Pesticide use on irrigated lands continues also in the Sacramento Valley and may pose similar long-term health risks.

- ❖ The Department of Water Resources is responsible, along with the US Bureau of Reclamation, for meeting southern Delta salinity standards under D-1641, but has regularly failed to meet these standards with the water it has already been applying to beneficial use. Full application of water service to permitted places of use of the San Joaquin Valley and Tulare Lake Basin and southern California water service areas of the State Water Project would exacerbate these poor water quality conditions and may hasten irreversible destruction of open water fish species native to the San Francisco Bay Delta Estuary.

2) Granting of the petitions would be contrary to the public interest:

- ❖ Environmental consequences of extensions of time on these permits would exacerbate economic impacts of State Water Project operations on communities depending on salmonid fisheries and agricultural lands in the south Delta whose water supplies are compromised by Central Valley Project salinity violations.

3) Granting of the petitions would be contrary to law:

- ❖ Approval of extensions of time for these permits would continue appropriation of water in "cold storage," nearly 20 years after many of these rights were to have been fulfilled. Delay in licensing these projects given the lack of due diligence in applying the water rights to full beneficial use is contrary to appropriative water rights law.
- ❖ Approval of extensions of time would enable continuing violations of the federal Clean Water Act and Porter-Cologne Water Quality Control Act, Fish and Game Code 5937; the public trust doctrine, and the California Constitution, Article X, Section 2.
- ❖ The environmental information contained in the petitions associated with these time extension requests is insufficient and inadequate for compliance with the California Environmental Quality Act.

The State Water Resources Control Board reported to the Delta Vision Task Force in 2008 that while the Central Valley watershed of California has an average annual runoff of 29 million acre-feet, the face value of water rights granted by the state to appropriative water right holders amounted to 245 million acre-feet. This means that for every acre-foot of real water in the Central Valley watershed, 8.4 acre-feet of water is promised through past water board action. This is contrary to the public interest. The face-value of permits on which the Department of Water Resources requests extension of time amounts to over 30 million acre-feet, which also exceeds average Valley runoff conditions, and is well above its major source, the Feather River. The California Water Impact Network and AquAlliance believe that an environmental impact report *must* be prepared on these petitions to identify ecologically sustainable direct diversion rates (if any) and contributions to storage that will end the egregious injuries we identify in our protests.

The State Water Resources Control Board in its notice has provided no analysis of how much water has been appropriated under each Bureau permit, and how much would remain to be applied fully to beneficial uses. The Department of Water Resources, in its supplement to the petition, acknowledges that it has not yet fully applied water from its State Water Project permits. The current sources of uncertainty they identify for their inability to make these determinations are not among the legitimate grounds for extension of time. We urge the State Water Board to make determinations for each State Water Project petition consistent with the Public Trust Doctrine, the federal Clean Water Act, California Fish and Game Code Section 5937, the federal Central Valley Project Improvement Act of 1992 Section 3406(b)(1), and California Constitution Article X, Section 2.

Under what conditions may this protest be disregarded and dismissed? Revocation of these State Water Project permits and issuance of licenses for their operations at levels of direct diversion and collection for storage that are consistent with the Public Trust Doctrine, the federal Clean Water Act, California Fish and Game Code Section 5937, the federal Central Valley Project Improvement Act of 1992 Section 3406(b)(1), and California Constitution Article X, Section 2.

A true copy of this protest has been served upon the petitioner: Erick D. Soderlund, California Department of Water Resources, 1416 Ninth Street, Sacramento, CA 95818.

Date October 14, 2010



Protestant(s) or Authorized Representative sign here

Date October 14, 2010



Protestant(s) or Authorized Representative sign here

Proof of Service

I hereby certify that on this day, October 14, 2010, I, Tim Strohane, have placed in first class mail at Albany, California, a true copy of these protests mailed to the following recipient:

**Erick D. Soderlund
California Department of Water Resources
1416 Ninth Street
Sacramento, CA 95818**

A handwritten signature in blue ink that reads "Tim Strohane". The signature is written in a cursive style and is positioned above a horizontal line.

Tim Strohane

EXHIBIT 3

Memorandum

Date: February 10, 2011

To: Mr. Chris Shutes
Water Rights Activist
California Sportfishing Protection Alliance
1608 Francisco Street
Berkeley, CA 94703

From: Department of Water Resources

Subject: Response to California Sportfishing Protection Alliance's Formal Protest of the Department of Water Resources' Petition for Extension of Time Regarding the State Water Project Permitted Water Right Applications 5629, 5630, 14443, 14445A, and 17512

Dear Mr. Shutes,

This letter is the Department of Water Resources' (DWR) response to the allegations contained in the formal protest filed by the California Sportfishing Protection Alliance (CSPA) on October 13, 2010.

In the protest, CSPA contends that the petition materials are not clear regarding what progress DWR will make if an extension is granted. Without evidence that satisfactory progress will be made, CSPA argues, the petition for extension of time should be denied. CSPA also identifies several permits that allegedly have already reached the maximum rate of direct diversion and maximum amount of storage. Accordingly, there is no need to extend the time for these permits and they should go to license. In support of their claim, CSPA points to the fact that the maximum annual diversion to storage from the Feather River at Lake Oroville occurred during the 1977/78 water year and therefore there is no hydrologic or operational explanation that would support a reasonable expectation of increasing the maximum annual diversion. As such, CSAP contends, the relevant permit should be licensed. Lastly, CSPA asserts that speculated future actions or changes related to the State Water Project (SWP) have no place in the petitions for extension of time and should be ignored by the State Water Resources Control Board (State Water Board) when considering the petitions.

The responses below are organized into two parts. Part 1 provides a brief explanation of the progress DWR expects to make during the requested extension period. In this explanation, DWR demonstrates good cause exists for an extension of time so that DWR can complete a planning process that will provide a realistic projection of future SWP operations. Part 2 explains why DWR does not believe it is appropriate at this time to proceed to license for the listed permits.

1. Satisfactory Progress Will Be Made During The Requested Extension Period Through 2015

CSPA states that if no new facilities will be constructed during the next five years,

there is no reasonable expectation that DWR will increase the amounts of maximum use. As such, no satisfactory progress will be made if an extension is granted.

As will be discussed below, DWR's plan for projected, long-term State Water Project (SWP) Delta operations is being developed in the Bay-Delta Conservation Plan (BDCP) process. Until the BDCP is completed, projections of future SWP operations (including diversions and use) would be very speculative. As such, the limited 5-year extension period that DWR requested is to allow time for the BDCP to be completed and a Final Environmental Impact Report/Environmental Impact Statement (EIR/EIS) to be issued. During the extension period the projected operations under the current regulatory regime will not exceed historical maximum rates of diversion and annual maximum diversions.

DWR has at times diverted at the maximum instantaneous rate allowed under the Feather River/Delta Permits, but due to various factors DWR has not directly diverted, rediverted, or diverted to storage the maximum annual amounts allowed under the Feather River/Delta Permits. If DWR proceeded to license, SWP diversions would be limited to the maximum rates and quantities diverted to date. However, DWR is unsure that the maximum historic rates and annual maximum diversions will be sufficient to meet future water needs, including DWR's contractual obligations, the State's future projected water demands, or possible needs to address vulnerabilities in the State's water supply associated with emergencies, drought and the effects of climate change. As such, it is in the public interest to continue evaluation of DWR's ability to make full use of the Feather River/Delta Permits so DWR can maintain operational flexibility in order to meet the SWP's water supply needs in the future.

Due to current uncertainties related to future operations in the Delta, it is not possible at this time to accurately predict what the ultimate diversions under the Feather River/Delta Permits will be, or a date at which the full permitted quantity will be put to beneficial use. Factors such as the outcome of the current BDCP process, recent legislation, current litigation, and potential impacts of climate change create tremendous uncertainty in predicting future operations and diversions. It is clear, however, that demand exists for the additional SWP water supply and demand is expected to grow as the service area of the SWP continues to develop.

DWR believes that the primary activity that will address the current uncertainty and, ultimately, provide a realistic projection of future SWP operations is the BDCP process. The BDCP will provide the basis for SWP and Central Valley Project (CVP) compliance with the state and federal endangered species acts and the Natural Community Conservation Planning Act. The BDCP will result in systemic changes in SWP and CVP conveyance infrastructure as well as restoration and enhancement of ecological resources. The outcome of the BDCP is expected to result in more long-term regulatory stability for the SWP. It will support the issuance of take permits from the US Fish and Wildlife Service (USFWS), the National Marine Fisheries Service (NMFS) and the state Department of Fish and Game (DFG). The BDCP is expected to have a significant impact on project operations. Program documents will include an EIR/EIS analyzing the potential impacts of project operations and the restoration and

enhancement efforts. The current BDCP schedule projects a final BDCP and EIR/EIS by the end of 2012. As noted earlier, DWR will be able to more accurately predict future allowable diversions from the Feather River and Delta following completion of the BDCP process. DWR thus limited the scope of the current petition to a short term extension of only five years to allow for the BDCP to be completed.

In addition, limiting the current time extension request to five years also allows DWR to reasonably predict and evaluate future operations for the period of the extension. DWR published its most recent delivery reliability report in August 2010, *The State Water Project Delivery Reliability Report 2009* (2009 Report). The 2009 report evaluates the ability of the SWP to deliver water to its contractors under existing conditions (Water Rights Decision 1641 (D1641) and current Biological Opinions). The report projects that under current hydrology and regulatory restrictions, maximum SWP deliveries will be less than 3.4 million acre-feet which is less than the maximum historic SWP deliveries. Because of the limited term of the extension, it is reasonable to expect that the water rights terms and conditions and regulatory restrictions will not change substantially before the end of 2014. Consequently, the current conditions analysis in the 2009 Report is a reasonable estimate of the level of deliveries during the period of the requested extension. If DWR were to instead proceed to license, DWR would expect to continue to operate under the same terms and conditions and regulatory restrictions. Continued operation up to maximum historic rates and annual maximum diversions (license case) is thus the baseline against which the current project will be assessed.

DWR recognizes that full beneficial use under the listed permits will not be reached in the next five years and that additional time will be required to reach full beneficial use. However, since the BDCP will offer the best opportunity to provide a realistic projection of future, long-term SWP operations, good cause exists to extend DWR permits until the BDCP is completed. At the end of the extension period, DWR anticipates filing for a longer term time extension and will comply with the California Environmental Quality Act (CEQA) for any petition filed at that time.

Importantly, during the period of the five year extension, DWR will continue to divert and redivert water to direct use and storage in accordance with the terms and conditions of its permits, as well as any additional regulatory restrictions imposed on the SWP, such as D 1641, and any biological opinions or permits for threatened and endangered species from federal and state agencies.

2. DWR Is Not Prepared To Proceed To License With Any Of Its Water Rights Permits At This Time

CSPA highlighted several permits that, in its opinion, should proceed to license. The rationale for this position is that DWR maximum rate of diversion and annual diversions to storage and use have exceeded the quantities allowed for in certain permits and, as such, there is no need to extend the time for these particular permits. For Permit 16479 (Application 14443), specifically, CSPA contends that there is no reasonable expectation that DWR will divert to storage more than its historical

maximum and thus this particular permit should also proceed to license.

For the reasons discussed below, DWR does not believe the time is ripe to proceed to license with any of the permits at issue in this current extension process.

A. The SWP is Operated and Regulated as a Single Project and its Operation is Not Segmented By Permit

The permits at issues here authorize the diversion and use of water at Lake Oroville and the Thermalito Complex, downstream in the Feather River and within the Sacramento-San Joaquin Delta and rediversion at the North Bay Aqueduct, Delta pumping facilities and the SWP reservoirs south of the Delta. The permits authorize water use for numerous purposes from multiple water courses and contain numerous points of diversion and rediversion for both direct use and diversion to storage. The project is thus operated as a single project and its operation is not segmented by permit.

Given the nature of how the SWP is operated, DWR believes the Feather River/Delta permits should proceed to license jointly at the appropriate time in the future. Approaching licensing in this manner will provide a more comprehensive picture of total diversions from the particular locations and ultimate use of water by the SWP. It will also allow the State Water Board to address public trust issues and apply terms and conditions uniformly. D-1641 provides a good example of regulating the SWP as a single project, where DWR's various permits are not separated out but are amended in an uniform manner.

B. In the Long-Term DWR Has A Reasonable Expectation of Increasing the Maximum Annual Diversion Storage From the Feather River at Lake Oroville

CSPA asserts that there is no hydrologic or operational explanation that would support a reasonable expectation of increasing the annual amount diverted to storage at Lake Oroville over that which occurred in the 1977/78 water year. DWR disagrees with this assertion.

While it is difficult to predict the future, there are certainly hydrological and operational circumstances in which DWR could exceed the historic maximum direct diversion and annual amount diverted to storage. While 1977/78 was the driest year on record, demands for SWP water were substantially below existing demands. Level of demand affects project operations and places additional demands on the SWP. It is reasonable to expect that SWP operations at Oroville could result in storage levels below that experienced in 1977/78. For example, storage in Lake Oroville at the end of December 2009 was the lowest since the reservoir was completed in 1964; including 1977, the driest year on record. Had hydrologic conditions in 2010 been sufficiently wet, total diversion to storage could have exceeded the historic maximum. DWR acknowledges that opportunities to increase its maximum direct diversion and diversion to storage from the Delta have decreased given the more stringent water

quality and regulatory requirements. However, the fact that these opportunities are decreasing (in the face of increased level of development within the state) is all the more reason to maximize storage if and when the opportunity arises. As such, DWR not only believes that it can reasonably plan for greater diversion to storage, but it is in the public interest to allow for that possibility. Thus, permit 16479 should not proceed to license.

Lastly, DWR is currently conducting an environmental review process in compliance with CEQA. As stated above, continued operation up to maximum historic rates and annual maximum diversions with the existing regulatory restrictions (the license case) is the baseline against which the current project will be assessed.

DWR appreciates CSPA's interests in the extension of time process and hopes that the above information addresses the concerns raised in the protest letter. If you have any questions regarding DWR's responses, please contact me at (916)653-8826 or esoderlu@water.ca.gov.

Sincerely,



Erick Soderlund
Staff Counsel

cc: Katherine Mrowka, Chief
Inland Streams Unit
State Water Resources Control Board
1001 'I' Street, 14th Floor
Sacramento, CA 95814

EXHIBIT 4

From: Kathy Mrowka
To: Andy Sawyer; Barbara Evoy; Erin Mahaney; Jim Kassel; Larry Lindsay; ...
CC: Kathryn Gaffney
Date: 2/11/2011 9:02 AM
Subject: Department of Water Resources Time Extension Petitions for A5629, 5630, 14443, 14445A and 17512

I have just reviewed the responses to protests on the time extension petitions for the Feather River facilities of DWR. A five-year extension has been requested. In some of the responses, DWR states that it does not expect an increase in historical maximum diversions during the time period requested and thus there should not be changes caused by approval of the time extensions. DWR states that it is currently conducting an environmental review process in compliance with CEQA. Continued operation up to maximum historic rates and annual maximum diversions (the license case) is the baseline which DWR plans to use. Since DWR is telling protestants that no increase in diversion will occur, I estimate that DWR plans to use an exemption.

DWR also advised the protestants that it intends to file for a long-term time extension after the Bay Delta Conservation Plan (BDCP) is completed.

This raises some important issues. First, a time extension should not be granted unless satisfactory progress will be made. DWR wants the Division to consider completion of the BDCP as showing satisfactory progress. In general, the anticipation that increased diversion and use of water will occur during the extension period is the test for satisfactory progress. Here, there is a concession that increased use will not occur until after a further extension is granted. The protestants have raised the cold storing issue, and DWR responded to the issue by saying that after BDCP they will be able to use additional water.

The protestants are California Sportfishing Protection Alliance, California Water Impact Network, Department of Fish and Game, Center for Biological Diversity, Trout Unlimited, Tudor Mutual Water Company and Feather Water District. If DWR does an NOE, Water Code section 1335 couldn't be used to resolve protests. In my estimation, Division staff won't get concurrence from the protestants regarding protest dismissal. In order to approve the petitions, a hearing would be required. I suggest that this item be moved to the hearings unit after DWR completes CEQA. If, however, you prefer a denial order than my unit would write the order.

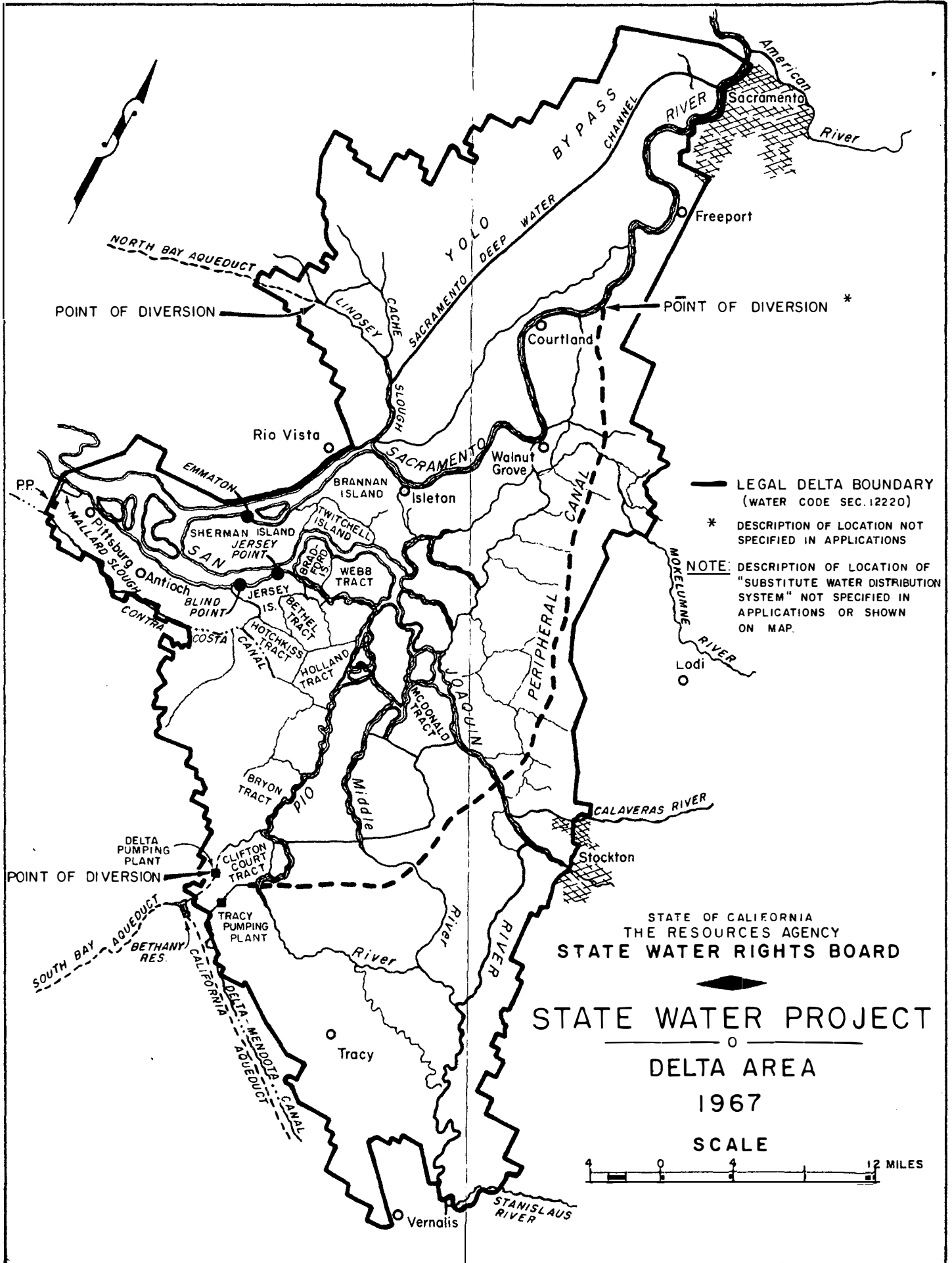
Please advise regarding your preference.

Sincerely,

Katherine Mrowka, Chief
Inland Streams Unit
Division of Water Rights

(916) 341-5363
fax (916) 341-5400

EXHIBIT 5



POINT OF DIVERSION

POINT OF DIVERSION *

— LEGAL DELTA BOUNDARY (WATER CODE SEC. 12220)

* DESCRIPTION OF LOCATION NOT SPECIFIED IN APPLICATIONS

NOTE: DESCRIPTION OF LOCATION OF "SUBSTITUTE WATER DISTRIBUTION SYSTEM" NOT SPECIFIED IN APPLICATIONS OR SHOWN ON MAP.

STATE OF CALIFORNIA
THE RESOURCES AGENCY
STATE WATER RIGHTS BOARD

STATE WATER PROJECT
DELTA AREA
1967

SCALE

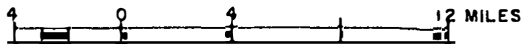
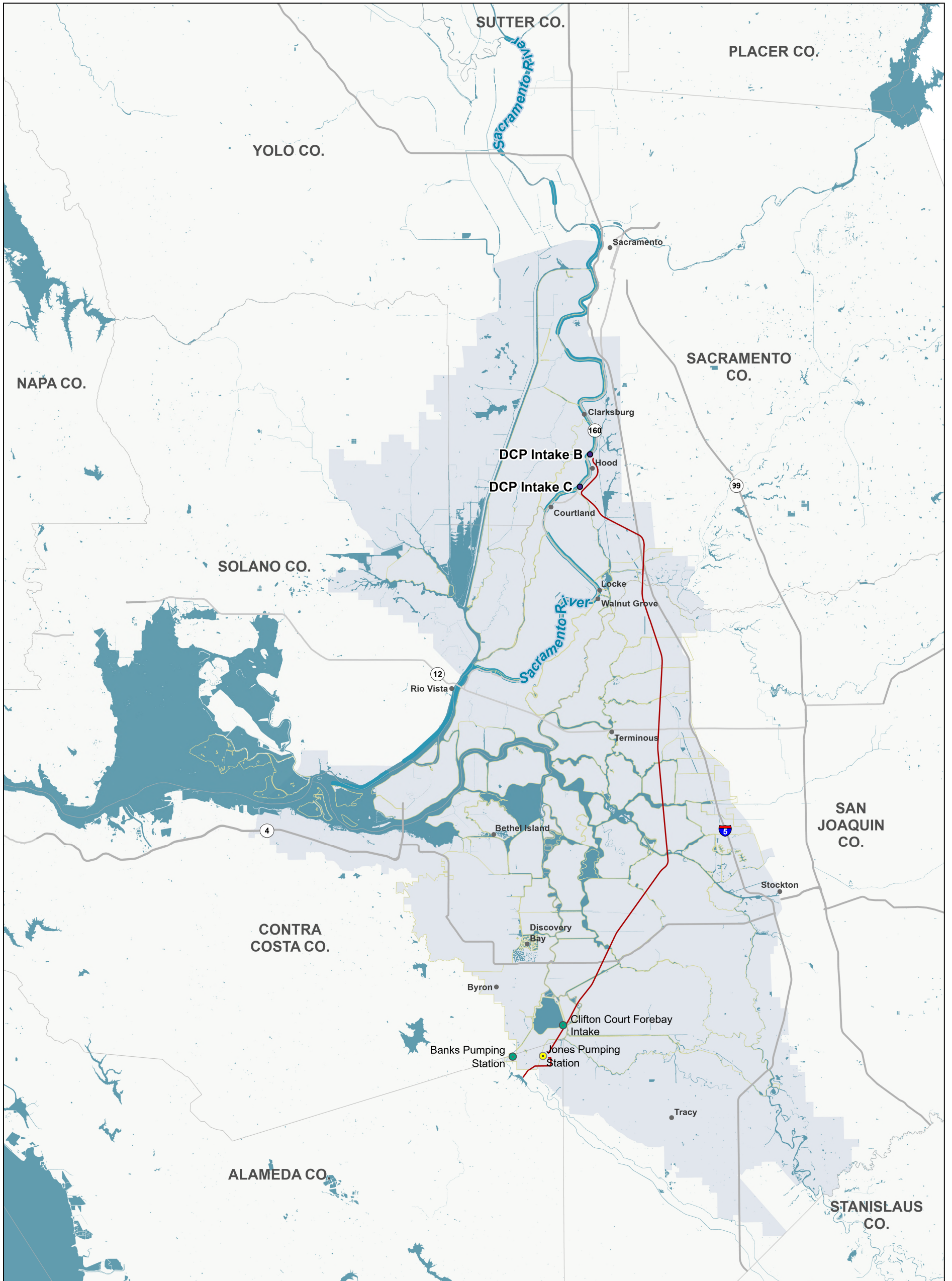


EXHIBIT 6



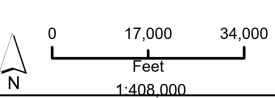
T:\WGI-38\GIS_33_00\GISRequest_11\FIDeliverable_10\FIENV305_24\DCP_CPOD.aprx 2024226

- Legend**
- Interstate
 - State Highway/Route
 - Railroad
 - Statutory Delta Boundary
 - Water

- Proposed Delta Water Facilities
- Diversion Midpoint
- Central Valley Project (CVP) Water Facility Point of Diversion
- State Water Project (SWP) Water Facility Point of Diversion
- Approved DCP Conveyance Alignment



*CCS NAD83 Zone 2
***** Intake coordinates are not field verified



Sources: Legal Delta Boundary, DWR 2009; Proposed and Existing Points of Diversions (DWR 2015); USGS 24k Quad; NAD 1983 State Plane California II FIPS 0402 (Feet)



Prepared by Crystal Bowles;
Reviewed by Leah McNearney

EXHIBIT 7



March 15, 2024

SENT VIA EMAIL DCP-WR-Petition@waterboards.ca.gov

Attn: Delta Conveyance Project Change Petition Staff
Division of Water Rights
State Water Resources Control Board
P.O. Box 2000
Sacramento, CA, 95812-2000

Re: Unresolved Protests of California Department of Water Resources' Petitions for Extension of Time for Water Rights Permits Needed for Delta Conveyance Project

Dear Delta Conveyance Project Change Petition Staff:

This letter concerns the failure of the State Water Resources Control Board ("SWRCB") to address still pending protests to the Department of Water Resources' ("DWR") 2009 Petition for Extension of Time ("2009 Petition") for the water rights permits associated with the proposed Delta Conveyance Project ("DCP").¹ On June 6, 2023 and July 7, 2023, California Water Impact Network, California Sportfishing Protection Alliance, AquAlliance, Central Delta Water Agency, and South Delta Water Agency (collectively "Protestants") submitted letters to SWRCB regarding DWR's 2009

¹ The State Water Project permits at issue are: 16478, 16479, 16480, 16481, and 16482 (collectively "Permits").

State Water Resources Control Board
Division of Water Rights
March 15, 2024
Page 2 of 3

Petition, and the status of the unresolved protests filed against the 2009 Petition in 2010.² The letters requested that the SWRCB clarify the status of DWR's Permits and that the 2009 Petition be assigned to the Administrative Hearings Office for further proceedings. There has been no response from the SWRCB. We have included the SWRCB Chair and Members, as well as the Executive Director, as recipients of this letter, and reiterate our prior requests that the SWRCB address our protests to DWR's 2009 Petition.

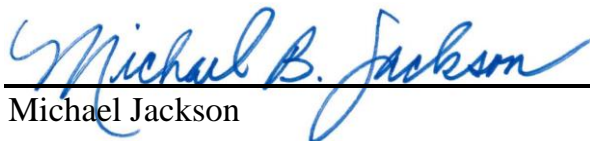
On February 22, 2024, the SWRCB received a Petition for Change from DWR to add two new points of diversion and rediversion associated with the same State Water Project permits that were the subject of our protests in 2010. Just seven days later, on February 29, 2024, the SWRCB issued a Notice of Petition Requesting Changes in Water Rights of the Department of Water Resources for the Delta Conveyance Project, setting the deadline for filing protests on the new Change Petition of April 29, 2024.

Protestants object to the noticing of DWR's new Change Petition prior to resolving our still pending 2010 protests regarding the same water rights. DWR's 2009 Petition, and the protests opposing it, have now been left unresolved for more than 14 years. Water allocated under the subject Permits has not been diligently put to full beneficial use, and thus has impermissibly been held in cold storage, for over 50 years using the 1972 Permit date and for over 90 years using the 1927 application date. The SWRCB's proposed ordering of proceedings is inconsistent with the water rights statutory scheme, implementing regulations, case law, and SWRCB Orders in other water rights proceedings. As a result, DWR's Petition for Change is incomplete,³ and cannot proceed prior to resolving our Protests.

Sincerely,

California Water Impact Network
AquAlliance

California Sportfishing Protection
Alliance


Michael Jackson


Chris Shutes, Executive Director

² The Protestants' July 7, 2023 letter, which includes the June 6, 2023 letter is attached as Exhibit A for your reference.

³ In alleging that DWR's 2024 Petition is incomplete for failure to resolve our protests, we do not waive the right to assert other bases for the incompleteness of the subject Petition.


State Water Resources Control Board
Division of Water Rights
March 15, 2024
Page 3 of 3

Central Delta Water Agency
South Delta Water Agency
Lafayette Ranch Inc.
R.C. Farms Inc.

South Delta Water Agency
Central Delta Water Agency
Lafayette Ranch Inc.
R.C. Farms Inc.



Dante Nomellini, Sr.



John Herrick

Attachment: Exhibit A, July 7 and June 6, 2023 Letters to SWRCB

cc: Joaquin Esquivel, Joaquin.Esquivel@waterboards.ca.gov
Dorene Dadamo, dorene.dadamo@waterboards.ca.gov
Sean Maguire, sean.maguire@waterboards.ca.gov
Laurel Firestone, laurel.firestone@waterboards.ca.gov
Nichole Morgan, nichole.morgan@waterboards.ca.gov
Eric Oppenheimer, Eric.Oppenheimer@waterboards.ca.gov
Kathryn Gaffney, Kathryn.Gaffney@waterboards.ca.gov
David J. Steffenson, David.Steffenson@water.ca.gov

EXHIBIT A



AQUALLIANCE
DEFENDING NORTHERN CALIFORNIA WATERS

July 7, 2023

SENT VIA EMAIL

(Erik.Ekdahl@waterboards.ca.gov)

Erik Ekdahl, Deputy Director
State Water Resources Control Board
Division of Water Rights
1001 I Street
Sacramento, California 95814

Re: California Department of Water Resources' Petition for Extension of Time for Water Rights Permits 16477, 16478, 16479, 16480, 16481, and 16482

Dear Mr. Ekdahl:

On June 6, 2023, California Water Impact Network, California Sportfishing Protection Alliance, AquAlliance, Central Delta Water Agency, and South Delta Water Agency (collectively "Protestants") submitted a letter to Chair Esquivel and the State Water Resources Control Board ("SWRCB").¹ The letter requested that the SWRCB clarify the status of the Department of Water Resources' ("DWR") water rights permits 16477, 16478, 16479, 16480, 16481, and 16482 (collectively "Permits"), clarify the status of 2009 Petition for Extension of Time ("2009 Petition") for the Permits, and the status of the protest that Protestants filed against the 2009 Petition. Protestants requested that the SWRCB respond to the June 6th letter by June 21, 2023. Having not received a response, this letter requests that you, as the Deputy Director of the Division of Water

¹ The Protestants' June 6, 2023 letter is attached for your reference.

State Water Resources Control Board
Division of Water Rights
July 7, 2023
Page 2 of 4

Rights, recommend that the 2009 Petition be assigned to the Administrative Hearings Office (“AHO”) for further proceedings.

DWR’s current iteration of new Delta conveyance, which relies on the ability to assert the water rights claimed in the 2009 Petition, would divert up to 6,000 cfs from the Sacramento River. Other entities also propose to divert water from the Sacramento River, such as the Sites Project Authority. Noticed for hearing on June 2, 2023, the Sites application would divert up to 4,200 cubic feet per second (“cfs”) from the Sacramento River and a yearly maximum diversion of 1,500,000 acre-feet. Those two applications amount to 10,200 cfs of diversions. With the apparent processing of the Site’s application first, it is unclear how DWR’s proposed diversions for the Delta Conveyance Project would be considered in the Sites hearing.

Further complicating matters, updates to the Water Quality Control Plan for the Bay-Delta (“Bay-Delta Plan”) to establish water quality objectives for the protection of beneficial uses are still pending. Amendments to the Bay-Delta Plan could restrict diversions in the Sacramento River Watershed. SWRCB staff’s “July 2018 Framework for the Sacramento/Delta Update to the Bay-Delta Plan” identifies a proposed inflow level of 45-65% of unimpaired flow, with a starting point of 55%. Again, it is unclear how any flow requirements affect the availability of water for these major new diversions from the Sacramento River. Continuing to hold the water rights sought in DWR’s Petition prejudices the orderly implementation of water rights as well as the protection of beneficial uses within the Bay-Delta watershed.

Assigning this matter to the AHO is within your discretion and consistent with past assignments by the SWRCB. For example, in February 2021, you proposed to assign the City of Stockton’s pending water rights application 30531B to the AHO for resolution. That application 30531 was filed in 1996 and requested to divert water from the San Joaquin River. In 2005, The SWRCB issued Permit 21176. However, the City of Stockton was required to develop the full beneficial use of the water by 2021. The City of Stockton informed SWRCB that it had not achieved the face value of the permit and was planning to request an extension of time. Based on the information you received from the City of Stockton, you proposed that the AHO resolve the application. Your letter to Executive Director Eileen Sobeck concluded, “Given the large project size and the location in the Bay Delta watershed, resolution of these issues would be most effectively achieved through a proceeding by the [AHO]. Therefore, I am recommending assignment of this matter to the [AHO] for noticing, conducting a proceeding, and preparing a

proposed order regarding the issues identified in this memo.”² The Executive Director subsequently assigned the matter to the AHO, which then commenced a hearing, ultimately ordering SWRCB to deny application 30531B.

Here, DWR has failed to develop the full beneficial use of the water and has requested multiple extensions of time. Protestants request that DWR be treated the same as other water rights applicants in the Bay Delta watershed, and not be provided special treatment for its water rights application.

DWR’s 2009 Petition, and the protests opposing it, have been left unresolved for more than 13 years. The AHO was created to “provide qualified, impartial hearing officers, to ensure that water rights matters, including water-related cannabis enforcement matters, are resolved in a timely manner, and to provide the board flexibility to assign hearing officers to other matters such as those involving water right change petitions and other matters concerning water right permits and licenses.” (Wat. Code, § 1110, subd. (b).) In order to ensure that water rights are not improperly put in “cold storage,” the SWRCB must act diligently to resolve the 2009 Petition and related protests, consistent with other applications and petitions in the Bay Delta watershed. Therefore, Protestants respectfully request that this matter be referred immediately to AHO for resolution.

² Letter from Erik Ekdahl to Eileen Sobeck can be accessed at: https://www.waterboards.ca.gov/water_issues/programs/administrative_hearings_office/docs/2021_03_29_notice_stockton.pdf, Attachment 3, p. 4.

State Water Resources Control Board
Division of Water Rights
July 7, 2023
Page 4 of 4

Sincerely,

California Water Impact Network
AquAlliance


Michael Jackson

California Sportfishing Protection
Alliance


Chris Shutes, Executive Director

Central Delta Water Agency
South Delta Water Agency
Lafayette Ranch Inc.
R.C. Farms Inc.


Dante Nomellini, Sr.

South Delta Water Agency
Central Delta Water Agency
Lafayette Ranch Inc.
R.C. Farms Inc.


John Herrick

Attachment: Exhibit A, June 6, 2023 Letter to SWRCB

Sent via email:

Joaquin Esquivel, Joaquin.Esquivel@waterboards.ca.gov
Dorene Dadamo, dorene.dadamo@waterboards.ca.gov
Sean Maguire, sean.maguire@waterboards.ca.gov
Laurel Firestone, laurel.firestone@waterboards.ca.gov
Nichole Morgan, nichole.morgan@waterboards.ca.gov
Eileen Sobeck, Eileen.Sobeck@waterboards.ca.gov
Jay Ziegler, Jay.Ziegler@waterboards.ca.gov
Kathryn Gaffney, Kathryn.Gaffney@waterboards.ca.gov
Eric Oppenheimer, Eric.Oppenheimer@waterboards.ca.gov
Nicole Kuenzi, Nicole.Kuenzi@waterboards.ca.gov
Megan Knize, Megan.Knize@waterboards.ca.gov

EXHIBIT A



AQUALLIANCE
DEFENDING NORTHERN CALIFORNIA WATERS

June 6, 2023

SENT VIA EMAIL

(Joaquin Esquivel, Joaquin.Esquivel@waterboards.ca.gov)

Chair Esquivel and Members of the Board
State Water Resources Control Board
1001 I Street
Sacramento, California 95814

Re: California Department of Water Resources' Petition for Extension of Time for Water Rights Permits 16477, 16478, 16479, 16480, 16481, and 16482

Dear Chair Esquivel and Members of the Board:

This letter is written on behalf of California Water Impact Network, Central Delta Water Agency, South Delta Water Agency, Lafayette Ranch Inc., R.C. Farms Inc., AquAlliance, and California Sportfishing Protection Alliance (collectively "Protestants"). Protestants request that the State Water Resources Control Board ("SWRCB") provide a status update regarding the Department of Water Resources' ("DWR") water rights permits 16477, 16478, 16479, 16480, 16481, and 16482 (collectively "Permits"). Under these Permits, the time for the completion of construction and putting the full amount of water to beneficial use passed in 2015 (or earlier). Since these Permits were issued, the hydrology of the Delta has changed, climate change continues to impact the State's water sources, and the development of water sources by DWR outside the Delta region has not and will not come to fruition. DWR has impermissibly put this water in "cold storage" for decades. SWRCB must determine the validity of the Permits, starting with Protestants' 2009 protests that opposed DWR's 2009 Petition for Extension of Time.

DWR's Petition for Extension of Time states that the Permits were issued to DWR on September 26, 1972.¹ The Permits initially required DWR to complete construction before December 1, 1980, and complete the application of the water to the proposed use by December 1, 1990. DWR failed to meet these deadlines and filed a Petition for Extension of Time. SWRCB granted the request, and in the early 1990s, the Permits were amended to require DWR to complete construction prior to December 31, 2000, and put the water to beneficial use prior to December 31, 2009. DWR, again, failed to meet these deadlines.

On December 31, 2009, DWR submitted another Petition for Extension of Time ("2009 Petition"). The 2009 Petition requested that the Permits be extended for an additional five-year period to 2015. The 2009 Petition states, "At the end of this period, DWR should be in a much better position to explain the time, facilities, and operations that will be necessary to maximize the beneficial use of water. Depending on circumstances in the future, at the conclusion of this five-year period, DWR may need to petition for further extension of said permits." Several entities filed protests against the 2009 Petition.

However, before the protests were resolved, DWR submitted a separate petition to change the point of diversion associated with the California WaterFix project. As a result, SWRCB issued a notice of public hearing and pre-hearing conference for the WaterFix change petition on October 30, 2015. Footnote 11 of the October 30, 2015, notice of public hearing for the WaterFix change petition stated:

Water right permits issued by the State Water Board specify a development schedule to complete construction and beneficial use of water. When a permit development schedule has elapsed, no further development of water use may occur. The permittee is limited to the maximum annual quantity put to use during the permit development schedule unless the permittee is granted an extension of time to extend the development schedule. DWR's time to complete construction and beneficial use of water for its subject permits elapsed on December 31, 2000, and December 31, 2009, respectively. On December 31, 2009, DWR filed petitions to extend the development schedule until December 31, 2015, for the subject four permits and two additional DWR permits. The State Water Board noticed all six DWR petitions on August 19, 2010, and received eight protests. The

¹ The Permits were initially issued at various times between the 1920s and 1950s.

protests have not been resolved and the petitions for time extensions are still pending.²

Therefore, in 2015, SWRCB publicly acknowledged that the protests related to the Permits had not been resolved.³ However, since 2015, the SWRCB has failed to take action to commence the hearing associated with the 2009 Petition protests.

Protestants' protests were filed in 2009. Although the 2009 Petition requested an extension of time to 2015, that date has long passed. The 2009 Petition is no longer valid. The below Protestants request that SWRCB respond to this letter within ten business days clarifying the status of the Permits, the status of the 2009 Petition, and the status of the protests filed opposing the 2009 Petition.

Sincerely,

California Water Impact Network
AquAlliance


Michael Jackson

California Sportfishing Protection
Alliance


Chris Shutes, Executive Director

Central Delta Water Agency
South Delta Water Agency
Lafayette Ranch Inc.
R.C. Farms Inc.


Dante Nomellini, Sr.

South Delta Water Agency
Central Delta Water Agency
Lafayette Ranch Inc.
R.C. Farms Inc.


John Herrick

² The Notice of Petition can be accessed at:
https://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix/docs/cwfnotice_pet_hrg.pdf

³ Prior to the conclusion of the hearing, DWR withdrew the WaterFix change petition on May 2, 2019.

Chair Esquivel and Members of the Board
State Water Resources Control Board
June 6, 2023
Page 4 of 4

Sent via email:

Dorene Dadamo, dorene.dadamo@waterboards.ca.gov
Sean Maguire, sean.maguire@waterboards.ca.gov
Laurel Firestone, laurel.firestone@waterboards.ca.gov
Nichole Morgan, nichole.morgan@waterboards.ca.gov

cc via email:

Eileen Sobeck, Eileen.Sobeck@waterboards.ca.gov
Kathryn Gaffney, Kathryn.Gaffney@waterboards.ca.gov