



State Water Resources Control Board

April 17, 2024

VIA ELECTRONIC MAIL

TO: Enclosed List of Commenters

DELTA CONVEYANCE PROJECT CHANGE PETITION PROCEEDING – RESPONSE TO REQUESTS TO EXTEND PROTEST PERIOD AND ADDRESS 2009 TIME EXTENSION PETITION

This letter responds to recent requests received by the State Water Resources Control Board (State Water Board or Board) regarding the water right change petition for the Delta Conveyance Project (DCP), for which a [Notice of Petition for Change](#) was released on February 29, 2024. Approval of the petition would add two new authorized points of diversion to the water right permits for the State Water Project (SWP), which is owned and operated by the Department of Water Resources (DWR).

Protest Period Extension

On March 26, 2024, the Board received a joint letter from 17 tribal, environmental justice, environmental, fishing, and public interest organizations¹ requesting that the Board vacate or extend the April 29, 2024 deadline to file the protests against the change petition. Specifically, the organizations request that the protest deadline be extended until 30 days after both the Board's decision on the pending water right application for the Sites Reservoir Project and the U.S. Environmental Protection Agency's (USEPA) approval of both the San Joaquin River and Sacramento River and Delta updates to the Bay-Delta Water Quality Control Plan (Bay-Delta Plan). Alternatively, the organizations propose that the Board set a new protest deadline 120 days after the Board's adoption of Sacramento/Delta updates to the Bay-Delta Plan, or that the current protest deadline be extended by not less than 270 days.

¹ The March 26, 2024 letter is signed by the Delta Tribal Environmental Coalition (comprised of the Buena Vista Rancheria of Me-Wuk Indians, Shingle Springs Band of Miwok Indians, Winnemem Wintu Tribe, Little Manila Rising, and Restore the Delta), the California Indian Environmental Alliance, San Francisco Baykeeper, The Bay Institute, Friends of the River, California Sportfishing Protection Alliance, Golden State Salmon Alliance, Institute for Fisheries' Resources, Pacific Coast Federation of Fishermen's Associations, Save California Salmon, AquAlliance, Sierra Club California, and Center for Biological Diversity.

E. JOAQUIN ESQUIVEL, CHAIR | ERIC OPPENHEIMER, EXECUTIVE DIRECTOR

Subsequently, an email of support for this request was received from Osha Meserve, representing “several individuals, local agencies and other entities.” Additionally, Emily Pappalardo, representing in-Delta interests, also requested an extension of the protest deadline, citing similar reasons as those identified below.

The March 26, 2024, letter describes the following justifications for the organizations’ request:

- The cumulative volume of material concerning the DCP to be reviewed, including material that will be included in the administrative record for pending litigation regarding DWR’s Final Environmental Impact Report (Final EIR) for the project.
- Overlap with the ongoing Sites Reservoir Project water right proceeding and associated resource constraints for the Board and interested parties in both proceedings and uncertainty regarding interactions of the operation of the two projects.
- Additional concurrent activities including California Environmental Quality Act (CEQA) litigation related to the Sites and DCP proceedings that stress government resources and burden tribes, environmental justice, and other non-profit organizations representing environmental and tribal interests.
- A lack of urgency in receiving the Board’s decision on the DCP petition given other federal or state permits that would be needed for the project to proceed have not yet been obtained.
- Other regulatory matters that will affect the project, including the update to the Bay-Delta Plan.
- The Civil Rights Complaint and Petition for Rulemaking brought by the Delta Tribal Environmental Coalition and Save California Salmon, which requested that the USEPA withhold any federal approvals of infrastructure projects, including the DCP, while conducting its investigation.

On April 4, 2024, the Board received an email from DWR opposing the requests to vacate or extend the protest period for various reasons including, but not limited to:

- DWR identifies that the petition relies on only certain portions of the Final EIR, and the Draft EIR has been available for review since July 2022;
- DWR notes that the DCP hearing is not anticipated to begin before the hearing on the Sites project concludes; and
- DWR further indicates that its approach to seeking completion of other environmental permitting concurrent with the protest resolution period for the change petition is within DWR’s discretion and is meant to provide for efficiencies.

The State Water Board understands the possible resource concerns that exist for parties participating in the Board’s processes and other processes related to the Bay-

Delta watershed and will endeavor to avoid significant overlapping due dates for the Board's proceedings. However, given the potential importance of resolving the role of the DCP project in the water supply for the State, the State Water Board is not prepared to substantially delay the processing of the DCP petition. Processing of the petition is also being staffed at the State Water Board to avoid impacts to the Board's ongoing Bay-Delta planning and implementation efforts. Additionally, there is no reason to delay processing of the petition due to the referenced civil rights complaint. That complaint is currently under consideration by USEPA, and it is not clear when the complaint will be resolved, how it will be resolved, and whether such resolution will have any bearing on the DCP petition. When such information is known, the State Water Board will determine whether and to what degree there is an effect on the DCP petition and whether adjustments are needed to the DCP petition processing.

The State Water Board is currently at the stage of determining what protests exist against the DCP petition and whether those protests may be resolved. The State Water Board anticipates that a number of protests will not be resolvable without a water right hearing. Accordingly, although any protests against the DCP project must meet basic legal requirements outlined in the notice of the petition, they need not be substantiated by an extensive amount of comprehensive information. Protestants should focus on any issues that may be resolvable with DWR before a water right hearing in order to narrow the issues required to be addressed in the hearing process. If parties anticipate that their protest cannot be addressed outside of a water right hearing, the protest need only identify the bases for the protest, supported by a short summary of the facts and information needed to meet the minimum legal requirements set forth in the notice of the petition.

Accordingly, the staffing burden for preparing protests can be limited. The Board is aware, however, that there were inadvertently two overlapping due dates for DCP petition protests and witness identification lists for the Sites Project hearing, a two-week extension to the due date for protests on the DCP petition is granted to alleviate any undue burden attributable to this inadvertent overlap. **The deadline to submit protests regarding the DCP change petition is hereby extended until May 13, 2024.** The schedule for the Sites Project will be separately addressed in a ruling letter from the Administrative Hearings Office following the Sites pre-hearing conference that occurred on April 10, 2024.

Status of the 2009 Time Extension Petition

On March 15, 2024, the Board received a joint letter from California Water Impact Network, California Sportfishing Protection Alliance, Central Delta Water Agency, and South Delta Water Agency objecting to the Board's processing of the change petition for the DCP while protests to a petition that DWR filed in 2009 to extend the deadline to apply water to beneficial use under the SWP permits (2009 Petition) remain outstanding.


The proposed new deadline that the 2009 Petition requested to maximize the beneficial use of water under the permits—December 31, 2015—has lapsed and several of DWR's stated reasons for that time extension petition similarly are now moot or have been superseded by subsequent developments. Accordingly, the Board does not plan to continue processing the 2009 Petition. Should DWR amend the 2009 Petition or submit a new petition for extension of time while the change petition for the DCP petition is being processed, the State Water Board will evaluate the extent to which the two petitions are interrelated and will provide the opportunity for public input. Absent receiving a new or modified time extension petition, appropriate conditions will be considered for any approval of the DCP petition, and the public will be afforded the opportunity to provide input on appropriate conditions.

Ex Parte Communications

Because the letters described above pertain to controversial procedural issues in a proceeding that is expected to require a hearing, they ordinarily would be disclosed and circulated to other possible hearing participants as an ex parte communication. Because the deadline for submitting protests on the DCP change petition has not yet passed, however, the Board does not yet have a service list for circulating ex parte notifications. Prior to that service list being active, these communications, this response, and any other ex parte communications received prior to that time are listed on the project webpage and made available on the Board's File Transfer Protocol site, for which credentials are available upon request to DCP-WR-Petition@waterboards.ca.gov.

If you have any non-controversial, procedural questions about the Board's proceeding regarding DWR's Petition for Change, please contact us at DCP-WR-Petition@waterboards.ca.gov.

Sincerely,



Eric Oppenheimer
Executive Director
State Water Resources Control Board

To (via electronic mail):

**Buena Vista Rancheria of Me-Wuk
Indians**

Michael D. DeSpain, SME, NEMAA
Chief Operations Officer/Natural
Resource Director
mike@bvtribe.com
Jesus "Jesse" Galvan
Cultural Heritage Specialist
jesus@bvtribe.com

Little Manila Rising

Gloria Alonso
Environmental Justice Advocacy
Coordinator
gloria@littlemanila.org

San Francisco Baykeeper

Eric Buescher
Managing Attorney
eric@baykeeper.org

The Bay Institute

Gary Bobker
Program Director
bobker@bay.org

Center for Biological Diversity

John Buse
Senior Counsel
jbuse@biologicaldiversity.org

**California Sportfishing Protection
Alliance**

Chris Shutes
Executive Director
blancapaloma@msn.com
cschutes@calsport.org

**Shingle Springs Band of Miwok
Indians**

Malissa Tayaba
Vice Chair
matayaba@ssband.org

Winnemem Wintu Tribe

Caleen Sisk
Chief
caleenwintu@gmail.com
Gary Mulcahy
Government Liaison
gary@ranchriver.com

Restore the Delta

Barbara Barrigan-Parilla
Executive Director
barbara@restorethedelta.org

**California Indian Environmental
Alliance**

Sherri Norris
Executive Director
sherri@cieaweb.org

Golden State Salmon Association

Scott Artis
Executive Director
scott@goldenstatesalmon.org

Friends of the River

Keiko Mertz
Policy Director
keiko@friendsoftheriver.org

AquAlliance

Barbara Vlamis
Executive Director
barbarav@aqualliance.net

Sierra Club California

Erin Woolley
Senior Policy Strategist
erin.woolley@sierraclub.org

Save California Salmon

Kasil Willie
Staff Attorney
kasil@californiasalmon.org

**Institute for Fisheries Resources &
Pacific Coast Federation of
Fishermen's Associations**

Glen Spain
NW Regional Director
fish1ifr@aol.com

**California Water Impact Network &
AquAlliance**

Michael Jackson
mjatty@sbcglobal.net

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

Dante Nomellini, Sr.
ngmplcs@pacbell.net
John Herrick
jherrlaw@aol.com

Soluri Meserve

Osha Meserve
Osha@semlawyers.com

DCC Engineering Co., Inc

Emil Pappalardo
Principal Engineer
epappalardo@dcceng.net

Cc:

Department of Water Resources

Carrie Buckman
Environmental Program Manager
carolyn.buckman@water.ca.gov
David Steffenson
Senior Staff Counsel
david.steffenson@water.ca.gov